United States Court of Appeals

for the Second Circuit

APPENDIX

76-2145

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

BENJAMIN MALLAH,

Petitioner-Appellant,

—against—

UNITED STATES OF AMERICA,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITIONER-APPELLANT'S APPENDIX

GERALD L. SHARGEL
FISCHETTI & SHARGEL
Attorney for Petitioner-Appellant
1290 Avenue of the Americas
New York, New York 10019
(212) 586-3732

ROBERT B. FISKE
United States Attorney for the Southern District of New York
One St. Andrews Plaza
New York, New York 10007
(212) 791-0055

B
P/S

UNITED STATES COURT OF APPEALS
FILED
DEC 1 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

INDEX

PAGE

Docket Entries 1A

Notice of Petition Pursuant to Title 28, United States Code, Section 2255 . . . . . 3A

Petition Pursuant to Title 28, United States Code, Section 2255 . . . . . 5A

Petitioner's Memorandum of Law in Support of Petition Pursuant to Title 28, United States Code, Section 2255. . . . . 18A

Interview Transcript of Cecile Mileto, Tape 9, Sides 1 and 2, Tape 10, Sides 1 and 2 . . . . . 24A

Affidavit of Assistant United States Attorney Jane W. Parver in Opposition to 2255 Petition 130A

Affidavit of DEA Agent Stuart Stromfeld in Opposition to 2255 Petition. 146A

Affidavit of Patrolman Gerald Lino in Opposition to 2255 Petition 151A

Memorandum and Order of Hon. Milton J. Pollack Denying 2255 Petition. 155A

Notice of Appeal 161A

1A

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J.	N/S	O	R	R 23	$	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCK. YR.	DOCK. NUMBER
[illegible]	76	3298	07	26	76	2	510	1					0858		76	3298

JUDGE TYLER

PLAINTIFFS

BENJAMIN MALIAH

DEFENDANTS

UNITED STATES OF AMERICA

10/87

CAUSE

petition for vacation of sentence

sls

ATTORNEYS

La Rossa, Shargel and Fischetti
522 5th Ave, NYC 10036 687-[illegible] 4100

BEST COPY AVAILABLE

1

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	DATE	FILING FEES PAID RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS CARD	DATE MAILED
	JUL 26 1976	13601		JS 5	
				JS 6	

v. 3298 MALLAH VS USA STEWART,J.

DATE	NR.	PROCEEDINGS
[illegible]	1	Filed petition to vacate sentence.
[illegible]	2	Filed memorandum of law in support of petition to vacate sentence.
[illegible]		Reassigned to Pollack,J.(mn)
[illegible]	-	Filed Memo end. on letter dated 8/27/76 from Pltffs attys to Judge Pollack re: order providing temporary transfer of Mr.Mallah to NY Facility. The within request is treated as an application for transfer of deft.Mallah to the NY Metropolitan Correction Center.E am of the pending petition and consideration of the circumstances involved satisfies the Court there is no necessity for or propriety in the request and same is denied.So Ordered.Pollack,J(mn)
10-19-76		Filed memo-end. on petition docketed 7-26-76...Accordingly, the petition is in all respects denied. Pollack,J. m/n
10-27-76	3	Filed Petitioner's Notice of Appeal from judgment entered on 10/18/76 to vacate sentence.

BEST COPY AVAILABLE

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

BY [illegible] Deputy Clerk

NOTICE OF PETITION PURSUANT
TO TITLE 28, UNITED STATES
CODE, SECTION 2255

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
BENJAMIN MALLAH,

Petitioner,

-against- No. 76 Civ. 3298

UNITED STATES OF AMERICA,

Respondent.
----------X

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Gerald L. Shargel, duly sworn to on the 2nd day of August, 1976, the accompanying Memorandum of Law, the Judgment and Commitment, and all the proceedings heretofore had herein, the undersigned will move this Court before the Hon. Milton Pollack, United States District Judge for the Southern District of New York, on the day of August, 1976, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Title 28, United States Code, Section 2255, vacating the conviction entered against the petitioner in the proceeding entitled United States of America v. Benjamin Mallah, et al., Docket No. 73 CR 881; and for such other and further relief as to

this Court may seem just and proper.

Dated: New York, New York
July , 1976

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Petitioner
Office and Post Office Address
522 Fifth Avenue
New York, New York 10038
212/687-4100

By: _____
GERALD L. SHARGEL
A Member of the Firm

TO:

HON. ROBERT B. FISKE
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York

PETITION PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 2255. (MJP)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
BENJAMIN MALLAH,

Petitioner,

-against- No. 76 Civ. 3298

UNITED STATES OF AMERICA,

Respondent.
----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GERALD L. SHARGEL, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice in the United States District Court for the Southern District of New York.

2. I am a Member of the Firm of La Rossa, Shargel & Fischetti, attorneys for petitioner Benjamin Mallah and I am fully familiar with the facts and circumstances herein.

3. This petition is submitted pursuant to Title 28, United States Code, Section 2255. This petition is made upon information and belief except as to those matters wherein it is stated your deponent has actual knowledge thereof.

4. The conviction which petitioner seeks to vacate was entered in this Court after petitioner was found guilty

by a jury of one count of violating Title 21, United States Code, Section 846. As a result of this conviction, petitioner was sentenced to a prison term of ten (10) years with a Special Parole Provision of three (3) years in addition to a $25,000 fine. Petitioner is presently serving that sentence at the federal penitentiary, Lewisburg, Pennsylvania.

5. Petitioner respectfully submits that this conviction was obtained in violation of the due process claim of the United States Constitution. More particularly, petitioner's claim focuses upon the apparently deliberate suppression by Government agents of evidence which was clearly favorable to petitioner. The evidence which petitioner claims to have been suppressed relates to the credibility of one of the prosecution's principal witnesses, Cecile Mileto. As will be more fully developed below, one of the key issues at petitioner's trial was the credibility of this witness. Petitioner's claim rests upon the Government's presentation of this witness as a woman who was deeply involved in the drug subculture before and during the alleged conspiracy, but who, upon deciding to cooperate with the Government, discontinued her involvement with drugs. Cross-examination of Mrs. Mileto at the trial of this action elicited repeated and staunch denials of current drug abuse and addiction. (E.G., T 213 - 214, 236) The witness testified at trial that she terminated her use of "hard drugs" in March of 1973. (T 213)

6. Petitioner Benjamin Mallah contends that this testimony was patently false; that Government agents knew it was false; and further, that had the true facts been disclosed, serious doubt would have been cast upon the witness' credibility. Furthermore, petitioner complains that the Government deliberately suppressed other acts of gross misconduct engaged in by this witness which obviously would have served to impeach this witness.

7. To place petitioner's claim in the proper context, reference must be drawn to the evidence presented by the Government at trial. Cecile Mileto, it will be remembered, was one of the key Government witnesses to testify against the petitioner. She began her testimony by recounting her husband's involvement in a narcotics operation allegedly run by Herbert Sperling. (T 38) Initially, Mrs. Mileto testified that she knew petitioner, having met him on a "couple of occasions". (T 46) More specifically, in December of 1971, the witness recalled being present at the Sperling apartment on Spring Street in Lower Manhattan where Sperling was allegedly counting $75,000.00 which was put into an attache case that Mallah was said to have left with. (T 50) While this money was counted, Peter Salanardi, a named defendant not on trial, arrived with a paper bag containing money that was added to the pile. (T 50) Additionally, Sperling was reported to have said to Mallah, "something to [the] effect

that $74,000 isn't too bad a haul." (T 50)

8. It will further be remember that at the conclusion of Mrs. Mileto's direct testimony, cross-examination by Mallah's trial counsel was reserved and a second witness was taken out of turn. (T 55 - 56) In perhaps one of the most spectacular displays of recollection refreshed, Mileto resumed the stand one day later and gave additional direct testimony concerning petitioner's alleged involvement. (T 204) Mrs. Mileto testified in her second appearance that on an unspecified date and time, she was present with petitioner and others at the Spring Street apartment. (T 204 - 205)[1/]

9. The defense in this case established that petitioner was a well-known bookmaker who received bets from a large number of people including Herbert Sperling. (T 1323 - 139) Petitioner testified that he had known Herbert Sperling for approximately three or four years, having met him in the vicinity of Seventh Avenue and engaged in gambling activities with him. (T 1368 - 1369) The clearly framed issue at trial was whether petitioner was the financier of Sperling's narcotics operation or whether he served as Sperling's bookmaker. One of the most critical pieces of evidence which, in the eyes of the jury, transformed petitioner from one who merely

---

1/ Cross-examination of Mrs. Mileto revealed that the account of the second Spring Street meeting had never previously been furnished to any investigative body or law enforcement official. (T 231)

associated and exchanged money with Sperling to a principal in the narcotics operation, was the testimony of Mrs. Mileto that Mallah was present when white powder was on Sperling's kitchen table. Obviously, therefore, the central issue in this trial hinged in large part on the credibility of Cecile Mileto.

10. At the time of trial, the Government disclosed information which, no doubt, would tend to impeach the credibility of this witness. Many sordid details of nefarious acts committed by this witness were revealed to the defense including the fact that the witness had been arrested for distributing seconal while in a protection program. (T 223 - 224) Petitioner submits, however, that the true conduct of this witness while in this program would have made her other immoral and criminal acts seem insignificant by compariosn and would have destroyed her credibility beyond any hope of rehabilitation. What raises this phenomenon to a constitutional due process violation is that the Government had knowledge of the true facts yet purposely suppressed them.

11. Following his conviction in this Court, petitioner appealed to the United States Court of Appeals for the Second Circuit. His conviction was affirmed on September 23rd, 1974. A petition for rehearing and hearing en banc was denied on November 12th, 1974. Thereafter, the United States Supreme Court denied Mallah's petition for a writ of certiorari.

12. After the prosecution, conviction and confinement of petitioner, Cecile Mileto turned to new avenues of revenue and collaborated in a book written about her life. Louie's Widow, Cecile Mileto with Dave Fisher, Playboy Press (1975). Your deponent has not only had an opportunity to read this book, but has carefully reviewed the transcripts of taped interviews with this witness conducted by the book's author, Dave Fisher. It is on the basis of these interviews that petitioner prosecutes this motion pursuant to Title 28, United States Code, Section 2255. It is these transcripts which reveal serious inconsistencies between what the witness now professes to be the truth and her testimony at trial. Moreover, and perhaps equally disturbing, is the portrayal of the utterly despicable manner in which this witness manipulated the Government and, in turn, the manner in which the Government concealed serious acts of misconduct on the part of this witness and then suppressed the evidence, which clearly would have benefited the defense.

13. To reiterate, this witness testified at trial to a history of criminal offenses and involvement with narcotics. She was quite specific about the fact that her addiction to drugs ended in March of 1973, when she began to cooperate with federal officials. (T 214 - 215) This testimony led the jury to conclude that the witness had somehow reformed and that this reformation served as an indicia of her credibility.

Indeed, after a history of shocking and flagrant drug abuse, the witness claimed to have escaped the shackles of drug dependency.

"Q I assume that now you have no interest in taking narcotics of any kind?

A I take pills for my nerves, which I am under a doctor's care for.

Q Other than that?

A None.

Q In other words, as you sit there now, you are completely cured of all these drug problems that you have had?

A I have no habit." (T 236)

14. Later admissions made to author Dave Fisher revealed a dramatically different picture of Mrs. Mileto's conduct between March of 1973 and the trial in December of 1973. These admissions gain constitutional significance because the Government agents "covered up" these nefarious acts and in some cases created an overly permissive atmosphere which allowed these acts to take place. Indeed, as will be seen below, the agents' conduct was often as offensive as that of the witness.

15. Contrary to her testimony at trial, Mrs. Mileto admitted to author Fisher that her involvement with drugs continued right up to the time of petitioner Mallah's trial.

"So now I go back to Baton Rouge and Dawn has met a few boys through Blythe - Clyde and Jerry and of course they're into drugs. No heroin, but morphine and alot of pot, downers, things like that.

Dynamite. I can get high now too."
(Tr. 30, tape 9, side 2)

* * *

"Now I'm getting high with Dawn, her boyfriend Jerry and Clyde. Morphine. Alot of acid, mostly pot, but I wasn't smoking any pot. I didn't want any part of it. I like S once in while, but I wasn't into them heavy. So now I'm gonna show them. I'm going to New York and hit a few doctors and get some downs off them. So I go to a doctor.

Q Are you gettin money now?

Yeah, I have money, there's plenty of groceries in the house. So I go to a doctor, Dr. Brown, and it just so happens I don't know where I am - I'm in the black section of Baton Rouge and it's a black doctor, and I rob his office. I clean him out of every barbituate he has." (Tr. 34, tape 9, side 2)

16. The "Dawn" referred to above is the witness' daughter, Dawn Mileto. Investigation by your deponent has revealed that the boyfriend "Jerry" is one Jerry L. Haacks, who died of an overdose of morphine on May 8th, 1973. Mr. Haack's death is relevant to this proceeding because it appears that this witness, the woman who testified at trial that she was only taking pills for her nerves, administered the fatal does of morphine.

"Jerry and Dawn are fighting now - Jerry is shooting morphine like crazy, and I'm getting him off. Hitting him, because he can't hit himself. Well, he'd tie himself up and I put the needle in his arm. I don't know that the kid's got a stomach full of barbituates. I know he's high, but I don't know what on - and we're all doing everything

anyway - barbituates, morphine. Cheryl comes one morning screaming, Maw, come over to Jerry's apt., hurry up. we can't move Jerry."

* * *

"So I clean house with the kids, get every set of works in the house out of there. But that's not an offense. In Baton Rough, a set of works, I didn't know that. I figure it was like NY. So we clean out the whole house of every drug, Herry had a pocketful of morphine, we took that over to my house, the works, the barbs, pot, everything. We called the police.

Now his sister was saying I murdered Jerry. He couldn't hit himself in the arm."

* * *

"They can't make a case because he had used drugs and nobody's saying that I was the one who gave him the last shot or anything like that.

Q Which in fact you were?

Probably - he may have gone home and somebody else had gotten him off, but as far as I know, I gave him the last shot." (Tr. 34 - 36, tape 9, 10)

17. Jerry Haacks it seems was Cecile Mileto's partner in morphine.

"I don't feel I murdered him, that's for sure - maybe he took a couple of more barbituates after it, I don't know. But we had gone partners and had bought alot of morphine - 90 tabs of morphine. And he had quite of few of them left in his pocket, which I took when I cleaned house and the barbs - whatever was left, I took to my house."

18. The death of Jerry Haacks, according to the witness, led to another incident where she was arrested for

the distribution of Seconals, a fact which was disclosed at trial. However, this disclosure was a far cry from what actually was happening during this time.

> "But my kids are spending my money as quick as I can make it - Dawn and her boyfriend are dealing drugs so I don't have to buy anymore - got a little speed and a little coke - anything you really want, but if there's nothing else around to get high on, you can always go out in the fields and pick some mushrooms." (Tr. 83 - 84)

19. At trial, Mrs. Mileto categorically denied that she injected drugs into her veins.

> "So I am correct then from March, 1973 until the present day you injected no drugs into your veins?
>
> A March of '73?
>
> Q That is correct, until today?
>
> A Until today, yes, that is correct." (T 214)

During the interview with author Fisher, the witness revealed the following:

> "Now Cheryl gets married - everybody else is in school, except for Dawn - she decides to quit school. Mark is dealing his pot all over the place, always buying grass - really stoned. Then he decides he's going to start getting high with everybody else with Towelum - a drug that's very popular in Baton Rouge. And it's very easy to obtain down there, you just call a dentist and tell him I have an abscess and he'll call in a prescription, it's morphone extract and you cook it down and it's good - very good. So Mark is shooting T. You shoot it. Cheryl and I are shooting and

> Danw starts getting off herself." (Tr. 80 - 81)

20. It is important to note that Mrs. Mileto's children share her taste for halluncinogenic and mood drugs. In fact, these interviews reveal that Mrs. Mileto's son Mark, who testified against petitioner Mallah during the Government's rebuttal case, was using Government monies to invest in the drug business.

> "Mark went in a second time after I testified - they brought him in again by himself and Mark had a blast. It was just before Christmas last year and he made about $400 and he put it right in the pot business and bought himself a pound of grass and a mess of acid and doubled his money up and partied - he must have had money in his pocket - even after Christmas shopping, because he doubled and tripled his money."

21. There can be no question that the Government agents well knew about Mrs. Mileto's involvement in drugs and, therefore, that her testimony that she took only nerve pills was false. It was the agents who came to Louisiana to straighten out Mrs. Mileto's troubles.

22. A casual observer may wonder how a witness, guarded by the Government's relocation program, was so easily able to continue her involvement with drugs. The tone of Mrs. Mileto's moral responsibility during this period was apparently set by the Government agents. According to Mrs. Mileto's interviews with author Fisher, Government agents engaged in drinking parties with the witness where, on one occasion, an agent starting shooting a gun owned by the witness' son. (Tr. 41, tape 10, side 1) Mrs. Mileto also revealed that on occasion

she carried the agents' guns.

> "They'd take me to dinner and I'd carry their guns." (Tr. 31, tape 9, side 2)

These same agents swam with the witness semi-nude during the months prior to trial (Tr. 42, tape 10, side 1) One of the United States Marshals assigned to guard the witness and her family, according to the tape transcripts, offered the witness' daughter Dawn $20.00 to engage in a sexual act with him. (Tr. 73, tape 11, side 1) On another occasion, Mrs. Mileto admitted that she stole things from a resort and placed the stolen items in the trunk of a Marshal's car. (Tr. 52) Later, it was revealed that Mrs. Mileto was self-impressed with her cleverness in obtaining drugs by making misrepresentations to pharmacists and then charging these drugs to the Drug Enforcement Administration. (Tr. 86)

23. Through the witness' own candid admissions, petitioner has presented a most distressing picture of Cecile Mileto's conduct between the time she began to cooperate with the Government in March of 1973 and petitioner's trial in December of 1974. That picture is dramatically different than the picture presented by the witness through her testimony at trial. Whatever material defense counsel had to lodge an assault upon Mrs. Mileto's character and crediblity would lose significance when compared to the evidence disclosed above. These taped interviews reveal that the Government had some degree of knowledge of what the true facts had been.

This is not a case where the "true facts" were merely cumulative. Here was a witness who had disclaimed any involvement with the drugs which previously had marred her life. The fact that this witness lied under oath, the very same oath which caused petitioner Mallah's conviction, requires that this conviction be vacated and the case set down for a new trial.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that petitioner's motion to vacate his conviction pursuant to Title 28, United States Code, Section 2255, be granted in all respects or, in the alternative, that this Court hold an evidentiary hearing on the facts raised by the petitioner herein.

/s/ GERALD L. SHARGEL
GERALD L. SHARGEL

Sworn to before me this
23rd day of July, 1976

/s/ MARION PANOS

MARION PANOS
Commissioner of Deeds, City of New York
No. 4-1629
Cert. filed in New York County
Commission Expires September 1, 1976.

PETITIONER'S MEMORANDUM OF LAW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
BENJAMIN MALLAH,

Petitioner,

-against- No. 76 Civ. 3298

UNITED STATES OF AMERICA,

Respondent.
----------X

Petitioner Benjamin Mallah, pursuant to Title 28, United States Code, Section 2255, has raised a claim that the Government knowingly allowed the witness Cecile Mileto to commit perjury during her testimony at the trial of petitioner. The alleged perjury occurred when Cecile Mileto testified at trial that she took no drugs other than sedatives for her nerves.

"Q I assume that now you have no interest in taking narcotics of any kind.?

A I take pills for my nerves, which I am under doctor's care for.

Q Other than that?

A None." (T 236)

The facts outlines in the affidavit in support of petitioner's motion demonstrate clearly that this testimony was false and did not correct it.

There is no allegation that the Government attorneys knew of Mrs. Mileto's continued involvement with drugs. However,

for purposes of this motion, it is submitted, this fact is not determinative. Plainly stated, the Government must be charged with the knowledge of its agents. Barbee v. Maryland, 331 F.2d 842 (4th Cir., 1964); Nash v. Purdy, 283 F.Supp. 837 (S.D. Fla., 1968); Walker v. Bishop, 295 F.Supp. 767 (E.D. rk., 1967); Giglio v. United States, 405 U.S. 150 (1972); Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495 (1971).

The American Bar Association, in its Project on Minimum Standards for Criminal Justice; Standards Relating to Discovery and Procedure Before Trial, recommended with regard to disclosure to the accused that:

> "The prosecuting attorney's obligation under this section extends to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office." 2.1(d)

First, it should be noted that the evidentiary value of the suppressed information cannot be minimized. Had the truth been disclosed at trial, the defense would have been entitlted to an instruction that the testimony of an addict is inherently suspect. United States v. Kinnard, 465 F.2d 566 (D.C. Cir., 1972).

This case, it is submitted, falls directly within the holding the Supreme Court's decision in Mooney v. Holohan, 294 U.S. 103 (1935). In Mooney, the Supreme Court held that a prosecuting attorney was under a constitutional duty to

disclose evidence which was beneficial to the defendant's case. There it was held that a conviction obtained through the use of knowingly false and perjured testimony cannot be permitted to stand. Subsequent decision reaffirm the position that the use of perjured testimony, known to be such by the prosecuting attorney, is a denial of due process. Pyle v. State of Kansas, 317 U.S. 213 (1942) and White v. Ragen, 324 U.S. 760 (1945). It is clear from the Supreme Court's holding in Giglio v. United States, supra, that a new trial is required when the intentionally suppressed evidence relates to the crediblity of a Government witness.

In Napue v. State of Illinois, 360 U.S. 264 (1959), the prosecution's principal witness testified that he had received no promise of consideration in return for his testimony. The Assistant State Attorney had in fact promised him consideration, but made no attempt to correct this false testimony. The Napue Court stated that:

> "The principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such settled factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

See, also, Brady v. Maryland, 373 U.S. 83 (1963.

The decisions of the Second Circuit Court of Appeals are crystal clear that the "intentional governmental suppression of evidence useful to the defense at trial will mandate a virtual automatic reversal of a criminal conviction." United States v. Stofsky, 527 F.2d 237 (2nd Cir., 1975); United States v. Hilton, 521 F.2d 164, 166 (2nd Cir., 1975); United States v. Morell, 524 F.2d 550 (2nd Cir., 1975).

In the recent case of United States v. Seijo, 514 F.2d 1357 (2nd Cir., 1975), a similar issue was presented with regard to the witness Torres. In ordering a new trial, the Circuit Court stated that had Torres testified truthfully with regard to his past criminal conviction, the exposure could have created a sufficient doubt in the minds of enough jurors to affect the result. 514 F.2d at p.1364.

The recent decision of the United States Supreme Court in United States v. Agurs, --- U.S. --- (June 24th, 1976), 19 Cr.L. 3159) does not affect the holding of the above-cited cases since this case involves an allegation of prosecutorial misconduct. In the instant case, it is clear that the undisclosed evidence concerning Mrs. Mileto's involvement with drugs would raise a reasonable likelihood that her false testimony could have affected the judgment of the jury.

PETITIONER MALLAH IS ENTITLED TO A HEARING PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 2255.

Title 28, United States Code, Section 2255, provides in relevant part that:

> "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." (Emphasis supplied)

In the instant case, there are conclusions of fact to be determined. These issues relate to the extent of misconduct on behalf of the witness Cecile Mileto and the Government's knowledge thereof. The United States Supreme Court, in United States v. Hayman, 342 U.S. 204 (1952), underscored not only the necessity of a hearing, but placed patricular emphasis on a petitioner's right to be present and participate in such a hearing. In Hayman, the Court concluded that:

> "The district court did not proceed in conformity with section 2255 when it made findings on controverted issues of fact relating to respondent's knowledge without notice to respondent and without his being present."

It is abundantly clear that in a case such as that at bar, the statute mandates a hearing.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that petitioner's motion to vacate his conviction pursuant to Title 28, United States Code, Section 2255, be granted in all respects.

Respectfully submitted,

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Petitioner

GERALD L. SHARGEL
Of Counsel

24A

I'm telling my laywer I want an appeal, I'm sending messages out to him from John he was always coming out to visit me - and my daughter Dawn - I want an appeal - I want to change my plea, I'm not guilty, and my lawyers are telling me - well, by the time you get an appeal it's gonna cost you more money and by the time you get one you will already have done 60 days you might as well do the rest. I'm telling him, You come in and do the rest. Even if it's only 60 days, I'd rather do 60 days than 90 days and now Herb is sending me lawyers to see if anybody's been up to talk to me. He doesn't want to know if I need anything, nothing like that.

F: When the lawyer walks in, he says Herbie sent me, you said to yourself, finally the guy's doing something.

No, I didn't say it- I figured he had a motive. What did he want now, you know. Why is he bother ing with me now? Does he think I've told the police that he worked for him, or what is he bothering with me now for? The lawyer came in and said, Herbie just wants to see how you're doing and if anybody's been up here to talk to you besides your own lawyer - if any the authorities havebeen up here bothering you. SoI told him no and I asked hime if Herbie would help me and he said he'd get back to me and I never saw him again. So I did the 90 days. John came and picked me up - oh, he didn't come to pick me up because as soon as I finished my time I was picked up by the Bronx. And I have a probation bond which was $500 and I had another bond - I don't know the bail was $1,000 - John put up $500 and/my mother put up $500 and they never got it back either. The case has been dismissed and everything.

25A

After three days I went to Ryker's Island and I had neverbeen there for before. Nassau County, as far as doing crime, is the best prison around.

D F, I understand _____ sex scandals - did you see any of that?

I was there when the guys cut all their wrists because of the radio - that riot. They were putting on these opera stations at night and they wanted the rock station and just a dumb riot. And I cut my arm xx while I was in there myself- I did it because - it was in the beginning I was kicking methadone and they had cut me off completely and I went for 3 days without sleep and even though I went without sleep I had a lot of friends on that side and I was kind of adjusting to doing my time but I was so sick - so this girl tells me the only way you're going to get anything is to g a doctor or hospital is if you're bleeding. So she tells me she's got a piece of glass. Oxxx I said all right, I'll hold my arm, you cut it, and this way I'll get to the hospital and myabe I can get to see a srhink and they'll prescribe some sleeping medication, since that was the xxx only way you could get any sleep. So she cuts my arm, I go to the hospital, I get six stitches and I told them it was an accident - I caught my arm on the gate. But they don't believe me and they throw xx x me in xxx lock anyway. This is on the other side. All you have there is - you're with the nuts, all of em. I think there are threecells and you're in one and the psychiatrist sends me back with some valium and xxx chlorol hydrate and really knocks me out to get a night's sleep. So I stayed in lock for four days and then they moved me over to the other tier because they said

I was causing a disturbance on the other side and they thought these girls were abad influence on me. So I fm finish up my time, I got bailed out from the Bronx and John takes me right from Ryker's to the Welfare. The Welfare gives me the - no, they called up the hotel and the Welfare place and there's a room there for you and they give you a certain amount of money fm - $12 -r something to eat on for 3 weeks. Now John has his unemployment check and I tell him I want to go into the Bronx to see my friend. He says I'll take you into the Bronx if you promise me you're not gonna get high. So he takes me and all this time I'm telling him this story about this girl in jail and her brother shot somebody and his name was Tommy and he's down in hiding. When we get to my connection house in the Bronx, we go in and there's this guy named Tommy there. John's not a wise guy from the streets or anything, he's kind of afraid of these hardcore junkies and it's not that my friendx is a hardcore junkie, he's a burned out speed freak. Man, did you see that go by? That kind of person you kbow? M Everything has a complete meaning to him, he's so totally paranoid - And why did you say that? And they go back and forth. Have M you ever seen one? They're completely burned out - really into it. And now I want to pick up the girls. No, I didn't pick them up yet, but I staged in the Bronx and John would say, if you're gonna get high, I'm gonna leave ya. I say to him, John, you know who that guy is over there? That's Tony and if you open your mouth one more time he's gonna shoot you. So John didn't move and I didn't wind up getting stoned. Now I pick up my daughters and I show em where I'm living and everything - Dawn and Cheryl - and they tell me where they have Mike and Seeley and Mark and we go to visit them in the shelter and the shelter tells me the rules - when I'm allowed to see them,

when I'm allowed to see em, when I can take them out myself.

D How are the kids adjusting to this?

My mother-in-law - my ex- tells me that the kids are staying out all night - the girls, she has no control over them and I tell her, well, I'm home now and I'll take them and everything will be fine. So they're living in this hotel room - John's living there, Dawn and Cheryl - one room - we're putting the mattress on the floor - we've got very little money to eat on - I try now to sign up with Nassau County Drug Clinic - Methadone - I wanna get back on that. So I sign up and I start going to the clinic every morning. I'm not going intothe Bronx too much any more for a while. So we're staying there pretty much and now while I was living in the other house and copping speed, my connection had run out at one time ad he caled me up and said, Ceil, I'm sick and I nedd some. I said, I'll go into the Bronx to cut some coke and bring you back a spoon. So I had done that and the police had come in and arrested me again one night while I was still at my house for distributing and they let me go the same night. They wanted to harrass me. So now as far as I knew there was no case or anything. So I'm in my hotel room with Cheryl - Dawn was out some place - she had a date - and John ' we're we-re laying down, the three of us watching television and there's a knock on the door. I'm just in a bathrobe. It's the police. I said all right, wait a moment, and I go to unchain t he door and they kick it and hit me inthe chest with the door. What's going on, I said to this cop. It seems this cop was always around and he was always the cop to arrest me and he was just a rotten - he'd go weeks harrassing my

kids after Louie's death - everything. So he says we have a warrant for your arrest. Three months ago you sold some cocaine to Larry. I never did it and I thought they didn't have a case - they locked me up in Nassau County and ~~kxx~~ my mother bails me out again. She flies ba~~kk~~ and ~~g~~ bails me out.

D Where is all this money coming from?

My mother has money. They owned their own busines - my father has a tire business - in New York - Astoria, Queens. Schultz. ERic's Tire Shop. So they're completely legitimate. My stepfather - and they bailed me out again - another $500 bail. My parents have ~~kxxx~~ on the streets now about $3500 in bail. And they've never received a penny back, they just continue bailing me out. So I go back to the hotel room and now I'm furious because I did give them the coke. First, I didn't know he had an undercover agent in the hall with him. The agent never really saw me. And I'm gonna plead innocent this time and I wnat a trial. So ~~xhexxxx~~ the ~~gxxxgxxxx~~ courts are going to appoint an attorney because I can't afford one on my welfare and ~~d~~ I'm gonna appear before this Judge Vitali. Now they say I can have a jury trial. So we pick out the jurors and the trial goes on for about a week and a half. About four days. And now I have an apt. with all five kids in Long Beahc. I don't have any money, I'm not seeing John any more, I got no way

John had had it with my drugs and everything - we were gonna get married but he couldn't stand my drug habits. I'm still seeing him occasionally. When I'd clean up, I'd call him and he'd come over and take me out. When I stayed stoned, I kind of stayed away from him. He only lived a few blocks from me. ~~xhexpixxxxdxxxx~~ That's

why I moved to Long Beach, to be near him. Now my kids are in school and I'm going back and forth to this trial every day and going to the methadone clinci, hitchhiking all over the place because I don't even have the carfare to go - there's no food in the house. So I have this trial and it's a hung jury - the witness for the defense gets on the stand and says I never gave him anything, he hardly knew me and the court has an affadavit that they can get a confession from the guy but they can't even introduce it because they never read me my rights and the cop admits to it - how he forced his way into my room, how they searched it and got into my bag and found some sachet and thought it was dope - Aha, look here, we've got it. And they found a _____ but they threw it out for me, they said, you've got enough cases pending. They read my rap sheet or something. So it's a hung jury and it's really late at night by the time the jury comes back and says to Judge Vitali that they can't reach a decision. The judge kept sending them back saying you have to come back with a decision. So they just can't come through. So the judge tells them to go home and tells me that they're going to either elect a new jury, or they don't know if they have grounds to do the trial all over again or what but anyway I should go home. So I went home and I'll be notified of another trial. So I go home and now Dawn and Cheryl are going to school, I'm sending them every morning, but they're going down to the library and spending the day there. The only ones who are going to school are Seeley, Blythe and Mark. Now Mark's starting to smoke a lot of pot, bring his friends Phillip who he always played hockey with home to spend the weekend. The house was like a complete party house 24 hours a day. We have an apt. now in Long Beach with three bedrooms - Mark has his own room, the

two girls are sharing a room and Ceily and Blythe are sleeping with me. I'm not sleeping anyway, because I'm starting my speed, I;m on my methadone and really strung out on speed and in fact they quit the methadone on me because I stopped going there and I kicked that with the speed. Cheryl has a boyfriend who's stealing prescription pads and I'm writing my own prscriptions for barbituates and Cheryl's writing hers and now Mark's writing his own and he's selling them. Him and his little friend - his little friend isn't using the _____, but Mark is and he's playing hockey, at five o'clock in the morning, getting beat up on the ice, he has a concussion becauee he's so stoned he can't even stand up on the ice. I'm going to his hockey games and on barbituates, falling out of them, and he's so embarrassed, he's yelling me, don't come near my hockey game any more, lemme play, and I'm up there yelling, put my son on the ice and he says I'm so embarrassed you're stoned out of your mind. Cheryl is completely wrecked all the time. Her boyfriend is starting to stay over now and Dawn is using barbs and when they do finally go to school, the school is calling me up asking me what kinds of drugs they're using because they're sleeping through every class. So at this point I don't care about anybody - I never even see Seeley and Blythe.

D Who's taking care of them?

They're there - they're taking care of themselves.

D What are they doing about food?

Surviving on what's there. Every time an welfare check would come in, I would go to a grocer. When that ran out, that ran out.

p. 8, tape 9

Everybody's kind of going their own way. Cheryl and I are kind of hanging out together. Dawn is hanging out with me now too - we're using a lot of speed. Our house is always packed with different people sleepingall over the place.

One day, Jerry Mino comes to the door, who is a narc. Dawn says, this real nice looking guy came and asked for you the other day. Curly hair, - he said his name was Jerry. I said don't invite him in, he's probably a cop. And we're doing so much speed, and we're staing up - I was very paranoid - so we're not going to let him in he door. A whole week or so goes by, we're still living our same life and two guys come to the door. I answer it. They want to see me. They're doing a probation report on me. My probation officer calls me, I was supposed to come in, I call her up and tell her I was just in a car accident which I was with Cheryl - her boyfriend had hit another car, and I was stoned in the back, he was barbed out, Cheryl was in the front, and I was kind of black and blue but it wasn't from the car accident. I had been stoned a few nights and been in a hamburger joint across the street with Cheryl and her boyfriend Nelson - - his father's a very big criminal lawyer in New York - and I'd fallen a couple of times in this place and I was black and blue all over. So I tell her I can hardly walk and I can't come in to see her. She says she and her supervisor are coming to my house to see me that day. So when they knock on the door, they've got two agents with em who tells em these are two drug enforcement agents and they want to talk to you when I'm finished. So she fills out my probation report - how many times have I been pregnant, have I

32A

ever had any venereal disease - the whole thing - and I think Dawn and Cheryl are in school today becase I tell em - my p.o. is coming today, you've gotta go to school in case they check. So of course they went to their usual library and I'm sitting there talking, listening to my prob officer and she finishes and tells me they're going to leave, is everything all right. Bob Clark and Stuart _____ are going to question me. They go into the kitchen. I'm in the kitchen with Stuart, the drug enforcement agency and Bob Clark, and they're telling me - all right, Ceil, we're gonna tell you right now, either you come into protective custody or we put you in a safe house. They're going to kill you. And with this they got a recording of a phone tapped of Herbie's _____ Herbie saying over the phone, yeah, I shoulda cut that bitch's tongue out a year ago. And he's talking about me and yeah, the kids are gonna go too - we'll throw them in the meat freezer. All five of them. And they're telling me this is a conversation about me and I'd better tell them what I know and cooperate.

D What goes through your mind when you heard that? You didn't know that Hebbie was involved with Louie -

They're telling me - you know, Herbie had your husband killed - whether he did the actual killing or put a contract out on him, because he found the extra cut when Louie was busted because the goods were brought to him - they didn't know by who at this point but you know Louie was stealing from Herbie. They had all this on tape.

So he xx told me what was going on - I had already known that Louie was cutting in. Joey had told me - and that Louie hadn't told me

33A

but he had told me that Herbie was mad at him that Joey had jumped the gun that time and bought Herbie the goods.

D So you listend to this tape - is that a quote - gotta cut that bitch's tongue out - put the kids in a freezer?

K In the freezer - all five of ~~me~~ em. They gotta go too - they know a lot of what's going on. I think he's talking to Johnny Hooks on the phone at the time. ~~He~~ In Westchester. So I start crying and telling the agents, I don't know anything. Because sincerely I didn't really think I'd know anything that could possibly help them. I had never seen Herbie sell any drugs - I'd seen him hand Louie or give him packages and different things. I saw what they were after a while when I got home - or I've seen Louie give large sums of money to Herbie, but I didn't thnk these were things ~~w~~ that would help the drug enforcement agency. So they tell me also they've been looking for me for a year and a half and they've missed me all the time - like when I did my 90 days -

D You were always registed with the welfare dept., how could they have not found you?

Well, they said they coudldn't find me. So they talked to me for hours - sitting at the kitchen table, I'm in a bathrobe - no, I wasn't nodding out. I was speeding my brains out. I'm scared to death. I know now I'm gonna go to jail, I'm gonna lose my kids again, ~~w~~ I'm afraid I'm gona be killed. I even tell them that you know you can't protect me if Herbie wants to kill me - you know how that goes - and they're telling me they're not thecity cop that they've handled quite a few witnesses in different cases and they're explaining to me, I can have a whole new life. I don't

have to worry about rent any more. They also ask me if I'm strung out, because if I am, they want to put me in the hospital to detox. And they'll help me in every way they can. The governemtn will support me - a nice apt., a certain sum of money evry month, a little car, a whole different identification, relocate, your children will be safe - you never know now when Herbie is gonna grab one of the kids on the street - Mark is always seen - we have a whole case without you anyway, but it wo-ld help, they tell me. Do you know any of these people and they've got pictures. No, I don't know anybody, and I'm crying the whole time, pleading with them that I don't know anything. Then they come up with the pat remark. You know who killed Patsy Parks. Now I know her - a very pretty girl, they stabbed her. Well, she was subpoened into courts a few months ago. Now she went to Herbie for some money to get out of town. The cops told me - this is the facts - don't think now, Ceil, of going to Herbie and think he's gonna get you and the kids out of town and hide you, because this is what they did to one girl, now you kow the kids and you both know a lot about what went on and he'll kill all of you. They stabbed her so many times and then threw gasoline on her. They told me all this. I knew Patsy Parks from Louie. I knew she went out with young Sonny a few times.

D What did you think about when you read she'd been killed?

I never read the paper, are you kiddin, too stoned to do anything like that. I didn't know what was going on in the outside world. So - XXXX now Dawn and Cheryl come home and say, who are these guys? And I tell them. Stuie says, don't tell your kids who we are - we're you're probation dept. So of course when the cops told me not to do it, I grabbed the girls right away and said, these are feds, they're

35A

here about daddy, and I give the girls the whole story as quick as Ican. Not that I hope they'll understand. Herbie's gonna kill us and they both come in and they're sitting there listening tothese guys and the girls and I are so close now, I say, what do you think we should do? Are you crazy? Let's get outta town, they tell me. Don't say a word to them, mom, or we'll all be killed. So Stuie and Bob Clark continue talking to me and they keep telling me - asking me if Iknow Bucky Samples and young Sonny - everybody Johnny _____ - all these people. No, I don't know them, I keep denying it. Three, foour, five hours. Now tehy tell me - Ceil, then we're gonna have to take you in and lock you and the kids up. Now everybody's home - Blythe, Ceily, Mark - sitting in there - I'm telling them, you kxx have to lock me up, and I'm cryin, but I don't know what for, because I don't know anything. We're gona put ix you in a x safe house, you and the kids, because you're gonna be killed. They're gonna come and kill you now, and you're not gonna cooperate, and without your cooperation we can't give any protection. The only thing we can do is throw you and kids inthe safe house, and that's not too pleasant. A safe house is like a x jail - you don't go out - we'd all be together, but it's xx the same thing xxx they put me into. Protective custody.

D Can they do that?

They'regoing to subpeona me to court as an uncooperative witness. And you owe a lot of time, they're telling me , and now you're gonna xxx do this time for not cooperating. Okay, I'll think about it for a few minutes, and I go and tell Dawn and Cheryl. Look, I'm gonna tell them what I know, xxx which I don't think is anything. What can they do to me? Herbie's gonna kill us anyway, we might as well.

p. 13, tape 9

What did he ever do for us anyway? And now he killed daddy, we find out.

b What were you thinking about Herbie at that moment?

I hated him, I had a vendetta I wanted to settle. So all these months, too, I had bee putting little pieces together and I kind of felt Herbie had killed Louie. For example, don't call the police and report him missing, and he could be lying in a ditch somewhere. Don't have anybody look for him. Joey telling me Herbie's gonna have his legs broken when he does - and maybe this is all a cover, ya know, everything he had done to me, not even coming near the kids and I when we needed the most help. No matter what I was doing, I was still Louie's wife - he was supposed to be so close to Louie. So I told the police, I told Stuie and Bob Clark things I knew - there were drugs in the house and I found out Louie was into heavy drugsxx when we lived in Elmhurst. And did you ever see any money passedxxxd from one to the other? Yes. Now they xkxxx take me down to 57th St. to Anthony Pole's office, the directorxxxxxx of the whole thing - he looks like Alfred Hitchcock. And he speaks French a little and I speak a little French and we're - I'm telling him I don't speak very much and he's very nice, he xxxxxx bought me a hamburger, I'm starving, and I'm kind of coming down off speed and I'm very nervous and the cops are telling me how I'm still a young woman and not a bad looking girl and maybe someday I could remarry if I could make a new life for myself. Who the hell would want you like this? They know I'm xxxxxxon something. So I go to Anthony Pole's office and he asks me what I know and I told him the few things I do xx know - how are you able to live like you were?

I'm telling him x how Louie worked for Herbie. And how did I know this?

37A

Louie told me. And how much money was Louie making? $5,000 a week. Who was giving him this?z and what for? And do you think you'll be able to get on the stand and identify these people, and they're showing pictures, and asking me ~~kax~~ - yes - andwho is this guy? And they have pictures of Joey Comfordi??? there - know him? Yes. He worked for Louie - he helped Louie cut once in a while.

D Were you mad at Joey at all?

No, I wasn't mad at Joey, but they're telling me now also that Herbie is gonna kill just everybody around him who knows anythign, and I'm sure Herbie's not sure of Joey - and they know now - ~~kkax~~ I see Joey at Herbie's house alll the time when I was still living in Belmore and when I moved to Long Beach, I'd pass Herbie's house, or ~~they'd-be-over~~ the kids would be over there and they'd tell me they saw Joey - they ~~kaax~~ know Joey is doing something for Herbie, and probably cutting. So I figure the kids are gonna get killed if all they say is true. So I give them Joey's name and everything and they didn't know who he was. They didn't know that Ceil the mother had been helping. They'd laugh about all this. Look at this - the mother's in this, too. They were thrilled over that. Herbie's mother. Did you hold back anything? I tried to keep Josephine out of it as much as I could. I really felt bad for her. I saw ~~k~~ her expression on her face when I told her Louie was killed. I mean, when I went over there and I talked to her, I felt that she was - with such hate and anger - she didn't sit down with me and Josephine and I were close and she tried to more or less stay away from me. She ~~as~~ wasn't the Josephine that I had known. We were so close. And she was kind of disgusted with Herbie at this point. Her look anyway. So I told them just about everything I knew and then Pole

said, all right, we'll put her in custody, she'll be moved out of NY tomorrow. They asked me where I'd like to go in the United States.

D This is the same day -

You mean you'd given enough information to make it worthwhile. Right. So now Pole says, yes, terrific, put her into protective custody. They asked me if I want agents to live with me or since they will move me out of town and change my name, will I feel safe enough just living out of NY and where do I want to go? Okay, I want to go someplace down south...

D Does it sound kind of fun?

Right, you can go anywhere you want- and you'll be given all new identification - nobody is gonna find you, don't worry about it. But if you still feel you're nervous or anythinglike that, you still feel your life is in danger - this all happened in twenty-four hours, less than that - then we'll put agents around the clock with you. Okay - I don't want agents living with me - just get us out of NY and we'll feel safe enough. Anyplace where it's warm. They go home with me - Stuie and Bob Clark - and now they shut my phone off and they bring in one of their little portable phones and there are 2 agents there watching my kids already.

D What do your kids think?

They're mad at me. Mark is furious at me - you're gonna get us all killed - all of us - you know better, maw - daddy wouldn't like this. And I'm trying to x explain to Mark tnat Herbie killed daddy and just because he brought us up with a code that you don't talk, are you gonna stand for this? He's gonna kill us now too. And I told him about the whole recording and everthing and now Cheryl's got her boyfriend in the house

D What does Mark say? He still thinks I'm crazy. He doesn't agree

p. 16, tape 9

with me at all - maybe Herbie did - he still doesn't think at this point that his father would want him to talk and I was explaining to Mark that if Herbie had just shot him and threw him out on the road someplace - yeah, fine, but why did he have to cut him up like a sausage - and throw him in the trunk - kill him like that? And Mark is crying. None of us like to talk about this. So Cheryl's boyfriend Nelson is in the house and he's just come back with a whole mess of pills and he's following me around, he's stoned, and he's trying to get me high. And I'm trying to make beds up for the agents and everything, and I'm telling Nelson to get out of here, but I can't tell Nelson these are the feds and everything, because he can't know anything, and he is wrecked. Cheryl's trying to get some pills off him and he's trying to turn me on and Dawn is not talking to me, Ceily and Blythe are busy - you know Blythe especially - they've already made friends with the agents now and it's like we have company - and they don't talk to me anyway, they can't stand me because I'm a drug addict. So now Stuie is telling the kids how he knew daddy, he'd had arrested him - he was the cop with the six guns and he's doing all this for the kids. What are you bothering me for, man, I'm just laying on the floor- and he's got the kids laughing, and you know my father, and they're all thrilled, and - you know you look like him? And Stuee can even act like him. So all the kids are now listening to Stuie and they're happy and finally I take one of Nelson's pills. I figure I'm speeding and one'll put me to sleep next. Now we finally get rid of Nelson and I go down and lie down with Cheryl - and she won't talk to me at all because she don't wanna leave Nelson. She's in love with him. So she's crying and I'm telling her, if you like

p. 17, tape 9

we'll tell Nelson where you are, so she's saying, you're crazy, I wanna stay here, I don't want to leave Nelson - so now we have to get ready to move out, but the agents tell me I don't have to pack anything. All I have is dirty laundry. Just grab a few things and everything else will be there in a couple of days - that they have men just for that to come into your house and pack up your clothes. Don't tell the kids where you're going until you're on the plane because we had an experience once with a family - there were about seven children - before they got off the block the whole neighborhood knew where they were going and they had to change everything. So now my kids - I've always told everything. and they've always known what was going on and they know I'm lying to them. I'm telling them we're going to California. Oh, you're lying, you're lying - and everybody is arguing and fighting and I'm halfway straight now and it's driving me crazy. We're all up in Mr. Pole's office now and I'm sitting at one side of the room and they're all together. So they get us to the airport. We look like rags, all of us. And Blythe has a dog - from one of my drug parties. She had become such an obnoxious child that she bullied this girl - a 19 or 20 year old girl into giving her her dog. I'm gonna scream the whole time I'm here if I don't get to take the dog home with us. So the girl gave it to her, and Blythe is leaving and Moota can't come. So the agents have two cars, and the agents have Dawn and myself and Cheryl in one car - and Mark and Geiley and Byth and Moota in the other. And they're talking to one another on the phone. Mark is using the phone, the walkie-talkie, and they're like having fun. It's the first time we're all kinda together and it's a new experience for them. So we're missing the

plane and we're running through the airport with the dog and you know how you have to go through to be checked - and xxx all these guys have badges and guns and theyxrxx go through the things and they're all lighting up and they're trying to show them they're the government. Finally they get us on the plane, the dog - they had to hold up the plane - and I told the kids we're going to New Orleans. This was xhxixxdxxx our destination, and an agent was going to meet us at the airport - x we'll all hve new identification because this is what I've g been told. We get to New Orleans - it's a pretty long trip - and there's this Mr. Ford and he shows me his identification - he's a federal marshal. Now the marshals take over - they're the ones who protect you. The drug enforcement are the ones who arrest and investigate you. These are the people who protect you. I'm Mr. Ford - he's a southern aceented, crewcut kind of guy. Now I'm used to enforcement agency, longhair, hippie kind of guy - xxx kind of people I can talk to. Well, where's my identification?
I'm Mr. Ford. /I don't know ma'am - a xx twang. Right now I'm furious, because they have lied to me. Right away. I think I'm supposed to have all identification - I said, what hotel are we staying xx in? I don't know, we'll have to find one.
The dog's in the back of the car. He had shit all over the inside of the kennel. He's got that all over his feet. The kids are fighting, don't put your dog on us, Blythe. Blythe is letting the x dog jump on all the kids in the back. The car stinks - it's about 11 at night, we're exhausted, we don't know where we're going, we're hungry, everything. Oh, here's a hotel. The Home, Sweet Home. Right outside of New Orleans. How far is New Orleans? Oh, about 15 miles, ma'am. And I'm gonna choke this guy any minute if he

42A

ma'ams me one more time. So he put us in this motel alongside the road on the way to New Olreans. Two rooms, two televisions. Dawn add Cheryl are already telling me - this is our room - we don't want anybody in there. They're fighting. They hate one another. Cheryl is always beating Dawn's brains out. And she is going to kill Dawn because she had to leave Nelson. If Dawn says one thing to her. Dawn is the only one who has ever taken care of herclothes or anything, so she's got everything with xxxx her - pajamas, her whole wardrobe. Because everthing was always hers anyway. So we're stuck now in this little hotel until they find us a place to live - an xx apartment. No cooking facilities. We had to go out and get what we wanted. Very expensive. They were giving us - k like we had to pay our own hotel, it was like $7 a room a night. They'd xx been giving us like $38 a week to xx feed the seven of us. Now I don't know what to do. They gave me like I said $38. Mr. Ford gave me money. He says, well, here's the money. I go in and check in and say, well, what name do I use? So Mr. Ford doesn't know anything. I checked in and he gives me the amount of money they've given him and if I have any problems he gives me a number to call. Okay. We're there. First of all the television goes off at 1 o'clcok. We used to watch it all night in NY. The dog is going crazy, barking and all- Ceily and Blythe still want to sleep together. Bythe wants to sleep with Mark. He doesn't want tosleep with me. It was just terrible. There's no pool or anything. Nothing for us to do but watch television.

They'll xxxx call me in for a xxxxx briefing when the trial begins.

D But they never even questioned you or anything else?

p. 20, tape 9, side 2

Well, the questioned me on what they felt I knew. And it only took about4 or 5 hours. Now the attorneys would start questioning me. So we stayed there for a few days

Q You never saw Mr. Ford again?

No, not right now. Justxxxxx until the money is starting to run out. We have doughnuts and milk for breakfast, no lunch, and hamburgers or something for supper. I'm not spending a lot of money or anything. The only thing I could say I spent foolishly was I was buying wine so I could sleep. And Mark and I are drinking wine. And my daughters were staying in at night. Once in a while they'd go for a walk at night, just to get out of the hotel. The two of them. So it's getting ridiculous, because I can't live on this kind of money and Icall another agent, not Ford - a name he'd given me, his superior or something, I called him and he comes over and he explains to me that I will be receiving $50 twice a week - $100 a week - and out of that I was to pay my hotel bill there, food, and anything else we should need, and I'm getting sick now at this time because I'm kicking all my drugs. I don't know where a hospital is, a doctor, I had just kicked that methadone habit. I just don't feel good. The kids are driving me crazy being cooped up. Blythe is losing the dog - we're on a big highway and she thinks he's gonna get killed, and she goes out looking for him. There are a lot ofblacks around there - everything was wrong with the place. So now we took a bus a couple of times into New Orleans, walked around, just for them to have something to do. I registered under the name Monet. The agents in NY now - this is even what the agent Ford knew me as , Mrs. Monet. They didn't know who I was or anything. That was the name they'd given us in NY.

The kids could pick out a name and that was the name they picked out. It was French and I was French - they just liked it. At first they were arguing all the names they were going to take - Mafia, Bono - all these names, they were going through the telephone book with Stuie. Stuie had become their favorite agent. In one day. He was so much like their father and Dawn was in love with him because he was so goodlooking, and they were already planning to marry me off to Stuie the agent. Isn't he gorgeous? Then we found out he was married. Of course he wasn't Italian, he was Jewish. But the kids just loved him, he was so much fun. He'd run through the airport and slide and fall and they just had a lot of fun with him.

D You were only with him one day?

Right, but they had a lot of fun - Mark loved him. He was telling him all about Louie. He'd had Louie's baseball bat - Louie kept promising Mark, Mark never got it. And they'd have him 5 or 6 times in one day, he'd go over the whole story of the arrest so he could imitate their father. Blythe was all over him, so was Ceily. Even when he told me he wanted to adopt Blythe. He had a little boy named Adam. He wanted to take Blythe home with him. So now we're still at this hotel and we went to New Orlenas a couple of times, to the movies a couple of times, but we're going crazy with one another being cooped up like this. So now I'm on the phone all the time and I'm complaining about the money situation, nothing to do, when am I gonna find an apt. so I can get settled, and where are my clothes? They don't know anything about my clothes. They're only here to protect me and that's it. If I have any problems with anybody bothering me, get in touch with them, but otherwise they tell me to leave them alone. Now I've had it and

I call NY and tell them what the marshals are doing to me. But we're alreddy there two weeks and they yell at me, why didn't I call sooner than this? That they would have straightened me out - that they were supposed to be giving me more money than this - if I was sick, they were supposed to take me to a doctor - everything. But nobody has done anything. At the same time now they've gotten me an apt. in Baton Rouge. Like 60 miles from New Orleans. The capital of Louisiana. So we're looking on a map and we can't even find the place. The kids are crying now - they're not ~~xxxxx~~ sticking us in some hick town. But let's see what it's like first. The federal marshalls tell us.

Some other marshal now comes to pick me up and he looks like Cannon, this guy and he's a gung-ho marshal. First of all we get in the car and he's trying to make my kids look like idiots. He's giving them all these riddles and rhymes. They are trying to figure out, but they're not really concerned. And he's telling us all about his navy career and who ~~xx~~ he's watched and how long he's been a marshal and the kids hated him from the minute we saw em we couldn't wait to get out of the car. So it's about an hour and a half drive all the way with this ~~x~~ bore and he says to us on the way up - we're all starving and we're broke at this time - would you like to stop for breakfast? So we go in and I got no money, but he invited us. I assumed. We stopped and had breakfast and I had coffee nad one of the kids - Blythe - she orders biscuits and eggs and everything. The bill came to about $2.50. So - cause we weren't sure now whether he was paying or not. So we get up and he says, that'll be $2.50, Ms. Monet. I says, well, I don't have the money. He said,well, why did your kids order all

46A

this stuff for? I said, well, I assumed you were going to pay for it. You invited me. Listen, pay for it. I'm supposed to receive some money and I'll pay you bak. He said, yeah, we don't put out money, we don't get expenses for this and he gave me a whole story. All right, fine. I'll pay you when we get where we're going. So we get into Baton Rouge and go into the federal building and the kids have to wait in the car, he tells em. Withthe dog. They wait there and I'm up there for about an hour. They're telling me, well, we're gonna give you $300 - to buy sheets, linens, pots, pans, ~~xx xxxxxx~~ blankets, everything, and that's gotta last you until your next check which comes in a month. So I says to him, ~~xxx~~ you mean to tell me ~~xxx~~ I'm supposed to get $300 for all this - what happened to my own sheets and pots and pans? When am I getting them? You won't be getting those until you're relocated and finished testifying. You won't be seeing anything. The government only makes one move. Well, this isn't what I'm led ~~xx~~ to believe from the beginning. I thought I was ~~xxx~~ getting an apt. and I'd get everything. And he's telling me, we want a phone in your apt. right away in case you have to contact us you can reach us. So we get in there, we get the apt. and I'm mad from the beginning because what's $400 - how's it gonna last us for a month?

No drugs at all at this point - Dawn and Cheryl have brought home two guys one night in the hotel - and they had two joints. I mean in Home Sweet Home. And they had their homegrown which they grew down there. And I haven't smoked pot in years. I think I had a couple of totes ~~xx~~ off that one joint. And Mark got stoned and they left. So now we're in this apt. - 3 bedrooms, ~~xxx~~ living room,

47A

and a kitchen - no television, no radio, no clock even - but there's a little food and I bought a monopoly game and a card game so we had a little something, and there's a pool for the apts., but nobody is going swimming there yet - it's in March - but we're just coming from NY and the weather is beautiful to us - so now I'm in the apt. and they're telling me I have to go in for a briefing. Well, I don't want my children left alone. I tell em I want some xxwagents with them. No, they can't put agents with them, but they'll get a housekeepr and she'll come in and take care of em. I'm going into New York for the briefing. Now, how am I supposed to get to the airport, I don't even know where I am and I'm to leave on a six o'clock flight. Call a cab, they tell me. All right. I arrange all that, get acab - the housekeepr will be there - the kids can stay a few hours by themselves. I fly into - I really don't know anybody besides Stuie and Bob Clark and then we had met this Jerry Mino and he was telling me about the few times he came to my house looking for me and the kids wouldn't open the door and I'm really disgusted with the whole thing - they way they treated me, the whole thing. I tell Stuie and he says, whadya mean they're only giving you $400 for that? You're supposed to get a lot more than that - medical expenses, because he had told me from the very first day the kids should have their teeth fixed. I had a lot of problems. So now I tell them all that but they're really not interested in that - now they're interested in what I know. I meet Jim _____ and John Gross, a couple of U.S. attorneys and they're explaining to me now how the trials are going to go. that I'll be having sometimes as many as 18 to 20 defense attorneys examining me and are you going to be able to stand up under this - and they're explaining to me

that Louie's murder is not to be mentioned in trial - that this'll give the defense attorney cause for mistrial because Herbie and everybody else are not being arrested for his murder and it'll probably never be solved or anybody arrested for it. So they're showing me everybody's picture - showing me all the surveillances, and Louie's picture is in there and I'm naming everybody I know. So they tell me how they'll let me know when everybody is arrested and they want me to tell them everything I knew or any drug, money -they keep asking me, did you ever see a fellow talking about Peter - did you ever see Peter Salinadi give Herbie any drugs - think about it for a few minutes- No, I never saw him give Herbie any drugs - I saw gobs of money he give Herbie and when was this - and hours of questioning. Other questions - you said Herbie's mother had something to do with drugs and that she had run the business for 13 years while Herbie was in prison. Yes, and I told them the story about the time Herbie was arrested for the pistol with Louie and how his mother took the shopping bag and went downstairs to Frances's apt. and she's telling me the story and laughing about how she fooled the police. And what is Joey Perfordi now doing with herbie? I said, he's cutting now probably. He had bought Joey an Italian restaurant - a pizza parlor right around the house there - and I seen him in there a lot at night after the place was closed I'm sure they're keeping drugs in the iceboxes - well, they didnt know anything about this restaurant or anything. Or even where Joey lived.

D How did you know Herbie had bought this?

Oh, I had gone to Joey a few times for money - stoned out of

mind in the restaurant - and he also dragged out his checkbook - he said he had no money. He has a Thunderbird now. I don't know how he's got it, and I'm telling him, Joey, that's my car, and I have no car to drive around in. He said, well, Ceil, I've gotta use it. You know Lou had it registered in my name before he diedand he's kicking the tires - look, the tires are even xxxx bald - and he drags out the checkbook, and I have no money either. Everybody's crying poverty after Louie died. Nobody's got a dime. Herbie's not saying anything and he's not giving a cent. So Joeys telling me how he loved Herbie at this point. So now the U.S. attornies are questioning me and telling me what they knew of Louie and how well he was liked down the street - that he was known as cheap. He would never go into a bar and buy everybody a drink beause he didn't drink. He drank coke. And they wanted to know about his telephone book and numbers, and by now they had gotten all of my papers back from the authroties out in Nassau County but they still hadn't gotten my jewelry.- now they also have all the receipts for anything I ever gave the agents. And they're definitely going to get everything back, but they're having a little problem. They're explaining to me that they won't have all my xxxx cases squashed, but they tell me they're going to speak to the sentencing judge on these probation charges and everything and not to worry xx about anything, because usually when you're a cooperative witness the judge will give you a suspended sentence. So I have lunch and I was very heavily guarded once I hit NY.

The first day I came in there I wasn't even questioned by the U.S. attorneys. I was up in a hotel room with Bob Clark, Stui and Jerry. And we spent hours - they were writing down everything I

p. 27, tape 9, side 2

said before I was to see the U.S. attorney. So they wanted names and addresses and just everything that I knew - did I ever see Sonny Gold - what did we do - they asked me a million questions. Now I stayed in NY for a couple of days and they explained to me that I would be receiving witness fees, like 10¢ a mile every time I came in for a briefing - and how they were going to make one clean sweep of the bust. In other words, everybody was getting arrested in one night and nobody knew about it - this was the most heavily guarded secret around. I remember laughing at Herbie - I was telling him a story about how we used to be in a barbershop and Herbie would be looking - you know how they put the lamps on you, different things, he'd say, yeah, well they have a movie camera or something behind this mirror and the Feds are watching us and ~~they~~ he'd be waving. They weren't watching behind the mirror but they certainly were taking pictures all the time and you'd see Herbie waving. They were showing the surveillance thing - Jerry Lino had said, pick me out in this picture, and I said, you're not here. And there'd be young sonny and a whole bunch of them sitting in front of the barbershpp on a Cadillac, right? It's in the summer. So Jerry Lino said, they had me in the trunk of this Cadillac for seven hours parked on Seventh Ave. and they had pictures of Herbie and everybody lookingat the license plate and herbie at this time was ~~it~~ sitting on the~~m~~ car making dope deals. This was the safest place - outside - and the guy in the trunk was saying, he was trying not to laugh his head off - he had to cough and I was so afraid to because they're sitting right on the trnk of the car.

D And the car was obviously wired.

He had a tape recorder in there. And Herbie is so funny anyway. Then Jerry goes on to tell me a story - before he found out the drug enforcement was interested in Herbie, - he is a narc in NY, right? - and he was going into a hotel one time to bust Herbie. And evidently the desk clerk called upstairs and told Herbie that there's a narc coming up, because by the time he hits the floor and comes out of the elevator, Herbie was coming out of the room and came over to him and said, Look, kid, lemme tell you something. If you don't stay off my back, I'm gonna cut you up in little pieces and mail you to every state in the U.S. and they'll never find you. So get away from me and leave me alone. And the kid left. He was in there with a hooker, Herbie. And they showed me pictures of Herbie and his girl. And I'd say, who's this girl? And they were giving me all the inside information about what everybdoy was doing the past year since Louie had been dead. They even showed me the guy who took Louie's place. They murdered him anyway. He took a machine gun and went to one of the after-hours joints downtown where one of the mafia bosses was sitting and machine gunned the place up and Herbie had him killed because you don't do things like that. He met his girlfriend friend. but they didn't kill her. They thought they did - they grazed her in the neck and threw his body on top of her and he was bleeding so profusely that they thought she was dead too. She got up and testified on that witness stand and put them away good. They hdd everybody and they let me know. They had everbody, from the mothers to - they were watching them, tailing them and everybody concerned. And people I didn't know. They were telling me that Herbie used Louie like Joey was Louie's flunkie - Louie was

Herbie. And I said, how can you say that? Look at the money he was making. He said, Herbie would never let him buy into that business. He wasn't gonna cut out Benny Marlo. Benny was fairly straight, not into anything really, he hasn't done that much time, he lived with all the debutantes of NY, they all owned horses and they were very wealthy and then they'd show me pictures of - I can' think of this guy's name either, but he was like the joke of the crowd. He was always - you'd see him one night and the next night you'd get a call from him, I'm in France or Italy, or someplace like that , and mail me $500, I'm broke. He'd go off on some party with all these wealthy people and wind up in oneof these places and not have the money to get back. So they had pictures of Josephine's brother-in-law - Jimmy Jones - they had Bucky Sampler. They didn't know who this big negro was getting out of the Cadillac running in and out of the barbershop. They must have 30 pictures of him. I told em Bucky Samples, and where was he from and how had I met him? Had I met him in the diamond district and he wanted to buy me a ring and Louie had yelled at me to get in the car, he didn't want me talking to niggers.

D Why did he want to buy you a ring?

He was flirting with me. He didn't know I was Louie's wife, and Louie had gotten out of the car, and I parked it - I used to drive him around a lot, he liked chauffeuring. So

You mean you'd drive him back and forth to work?

Yeah, a lot of times. And I drove him for a lot of drops, or I was with him in the car a lot. A lot of times he'd go in the Bronx

p. 30, tape 9, side 2

and run into a bar
and he'd grab a little paper bag out from under the seat/and come out with another little paper bag and put it under the seat go home and count the money, ya know? Or he'd run into the bar and come back out for the bag, but already I had been under the seat looking for the bag to see what he had. So

D How often did you go with him on the drops?

Oh, I'd say 6 or 8 drops, when we lived mostly in Queens, this guy Sal abd Stephanie, she was pregnant - never married - and I went to his house once and Mark went upstairs with him this one time and Mark came down and told me what a beautiful house they had and everything and that daddy gave him, oh boy what a shoebox of money he had for daddy and daddy had told him he'd be back the next day. I had gone on a drop behind McDonald's, Woodhaven Blvd., you go to Rockaway. I had seen Louie give a guy a shirtbox which was full of money that Cheryl had wrapped. This was the same Sal. I testified to that.

These are all the things they were after. And they wanted particular incidents and dates. I couldn't give them dates. I could say, - well, then they'd tell me you hid the receipts you moved into the house such and such a date. Now think - was it around Christmas? Try and put those pieces together. And also you have to consider the majority of the time I was stoned. I didn't know what day it was. When I was on the stand, they brought those points up. So now I go back to Baton Rouge and Dawn has met a few boys through Blythe and - Clyde and Jerry and of course they're into drugs. No heroine, but morphine and a lot of pot, downers, thingslike that. Dynamite. I can get high now too.

So I rented a television for the kids and during the day we sat by the pool. We didn't care that nobody else was out there at this point. We had a few pairs of shorts, we still hadn't gotten ourclothhes. In fact, we never got our clothes. And they were going to make sure (the agents) that I got more money. They took me into Anthony Pole and the head of the marshalls was there and he was explaining to me how much money I'd receive every month and what the money was for. I was to receive $1,080 a month and that was for my rent and phone but the rent would be taken right away out there and one of the marshalls would go pay it - and the ~~ee~~ electric, they would pay that. The phone, there were to be no long distance calls - any of those were to be made collect and all I was to say when I did call one of the agents was, This is Ceil. Never any last name. They were getting me more and more afraid and while I'm there, the first day that I'm in, some drunk tries to get in the door and I'm in the shower and he tries to get in my door. In New York. I'm in the Holiday Inn right by the airport. And I'm in there with Stuie and Bob Clark and Jerry Rino and they had just come for the morning detail. They were the ~~xxxxxxxxx~~ only agents watching me, no marshals when I got to New York. And I got along beautifully with them. They'd take me to dinner, and I'd carry their guns. Jerry Lino wanted to take off his coat and wanted to put his gun in my pocketbook, and I had a lot of fun with them, really.

So I'm in the shower and [redacted] we had connecting rooms. Theagents had one room and Ihad the other. And all of a sudden I'm coming out of the bathroom, and I see Jerry Lino running with his guns saying, stay right there. ~~And~~ And he's got

the door with his foot, right, and Bob Clark is coming from the other side to grab the guy. It just so happened it was a drunk and he was at the wrong room, but these guys were ready to shoot him. And another time when I was first taken into custody, all of a sudden my mother receives a package at her house. And it's from California, but it's got Santangelo which is Herbie's lawyer - his name on t he package.

This is the first day - I'm on the phone telling my mother, I'm going into custody, I can't tell you where I'm going, I just want to say you won't be able to contact me. Now my mother's very upset. She says, Ceil, are you crazy, don't get involved, these people will kill you, just like they killed Louie. And she's also telling me there's a package at the post office because my mother never opens the d-or. The house is sealed like a vault, believe me. She's always been like that. Every window was locked. You can't get in that house. She doesn't answer the door ad half the time she won't answer the telephone. Add my mother is a young woman , since my sister's death she's a little off.

And I had become a drug addict, and everything -

She said, there's a package for you, the postman stuck the thing in the door and its' from Fantangelo from California. I said, Fantangelo in Calif? So Stuie says, what's the matter? I said, my mother has a package from Santangelo which is Herbie's lawyer, but it's postmarked California. He says, tell her don't touch it. Don't accept the package or anythging. There will be two agents at the house to pick up the receipt, go to the post office and pick it up.

p. 33, tape 9, side 2

Well, the package must've been there for several weeks. They felt sure there was a bomb inside. It had been sent back - my mother could never get in touch with me. She wouldn't bother anyway, she'd figure I'm stoned.

D Oh, so they never got the package?

No, the package went back. They still think it was a bomb. So they wanted to know also at that time did I want my mother taken into custody. Whether she wanted to or not, they were going to take her. I says, let me tell you something - my mother would rather die than be taken into custody. And she would not allow you. She would put up such a stink. They wanted to take my mother and stepfather. If I felt their lifewas in danger ata all. I said, no I didn't feel it. Half the people didn't even know ax my mother, just knew of her. t

So I go back to Baton Rouge, Dawn has ix met this guy and she's spending the night over athis apt. She's 16 by now and Cheryl is all by herself, she hasn't met anybody, but she likes his roommate. So Dawn is gonna fix them up - Cheryl and Clyde. And I liked both of the boys, they were both nice. Jerry and Dawn were a nice little couple and he was taking her all over, really showing her Baton Rouge, and I was happy for her because she wasn't stuck in. Because this kid was getting up in the morning, getting all made up, sitting in the window, and I used to tease her, you think somebody's gonna come knock on the window and take you out? You're not that pretty.

Then they were complaining about the woman that watched them. They said, never do that to us again. This old witch, she sat on her behind, she didn't cook, didn't clean, Cheryl did everything.

Now I'm getting high with Dawn, her boyfriend Jerry and Clyde. Morphine. A lot of acid, mostly pot, but I wasn't smoking any pot. I ddin't want any part of it. I like S once in a while, but I wasn't into them heavy. So now now I'm gonna show them. I'm going to New York and hit a few doctors and get some downs off them. So I go to a doctor

D Are you getting money now?

Yeah, I have money, there's plenty of groceries in the house. So I go to a doctor, Dr. Brown, and it just so happens I don't know where I am - I'm in the black section of Baton Rouge and it's a black doctor, and I rob his office. I clean him out of every barbiruate he has.

D How did you do that?

Well, while he was in the room with another patient, I'm in his office, and he had all his little things hanging out there, and I take a couple of vials of Paris 400's, which is a pretty heavy barbituates, and I take them home and we all get stoned, including Cheryl. She's mierable, I'm miserbble, and I want to maker her happy. So this goes on for a little while and Dawn and Cheryl tell me they're moving out and moving out with Clyde and Jerry. And I've got nothing to say about it. Well, I moved them back and forth about five or six times, telling them I wasn't allowing it. But they had an excuse for it - no room in the apt., etc. So they'd stay there with the boys finally, and the boys decided to get a bigger apt. across the street, so they did. And now a lot of morphine is in town. Cheryls' seeing Clyde all the time, Dawn's living with Jerry, and they're doing a lot of morphone, a lot of downs. Jerry and Dawn are fighting now - Jerry is shooting

p. 35, tape 9, side 2

morphine like crazy, and I'm getting him off. Hitting him, because he can't hit himself. Well, he'd tie himself up and I'd put the needle in his arm. I don't know that the kid's got a stomachfull of barbituates. I know he's high, but I don't know what on - and we're all doing everything anyway - barbituates, morphine. Cheryl comes one morning screaming, maw, come over to Jerry's apt., hurry up, we can't move Jerry. I was sleeping on the sofa. I go over to Jerry and Dawn is underneath his arms, she has his arm around her neck, like this - she says, maw, I can't move his arms. I take his arms and I move him over, he was like on his face. I lift up his eyes, I put my hand on his chest and I don't feel a thing. I start punching the kid in the chest, breathing in his mouth. He's dead. He overdosed. On morphine. So I said, okay, Cheryl, Dawn, you go home. Clyde is saying, whadya mean, he's dead? You're crazy. Let's clean house. We've gotta get everything out of here then call the police.

So I clean house with the kids - get every set of the works in the house outta there. But that's not an offense. In Baton Rouge, a set of works, I didn't know that, I figured it was like NY. So we cleaned out the whole house of every drug, Jerry had a pocketfull of morphine, we took that over to my house, the works, the barbs, pot, everything. We called the police.

Now his sister was saying I murdered Jerry. He couldn't hit himself in the arm,

So now Jerry dies. Dawn wants to go to his funeral. She's really upset, because they were going to get married from what she told me. She was really in love with him. So at this point I had started going to a little bar across the street and having a few

p. 36, tape ~~2xxxxxxxx2x~~ 10, side 1

drinks every night. Just someplace to hang out, I didn't have Dawn and Cheryl at home anymore. Blythe and CEily had found friends, Mark had found friends and found a little pot hangout, smoking a lot of pot now. And we really have no clothes but things aren't going too bad. So I'm in the bar one night and Jerry's sister comes in.

D Where did the police get all this?

Oh, they took Dawn in and questioned her and they were trying to see if the boy was murderdd. They're trying to keep me out of the case completely. They can't make a case because he had used drugs and nobody's saying that I was the one who gave him the last shot or anything like that.

D Which in fact you were.

Probably - he may have gone home and somebody else had gotten him off, but as far as I know, I gave him his last shot.

I don't feel I murdered him, that's for sure - maybe he took a couple of more barbituates after it, Idon't know. But we had gone partners and had bought a lot of morphine - 90 tabs of morphine. And he had quite a few of them left in his pocket, which I took when I cleaned house and the barbs - whatever was left, I took to my house.

So I'm having a drink in this bar one night and his sister came in and she said, Jerry's being buried tomorrow. I had given her a couple of barbs the day he died - we were still friends. I ~~xxxx~~ felt bad for her even though she thought I had murdered him. So she says, my cousin came into town, just came from Missisippi, he's exhausted, he just missed ~~x~~ the funeral~~xxxxxxxxxx~~ and he can't sleep. I told her, I don't have any pills. She says, oh come on, Ceil,you can get em. I said, no, I realy don't have em, sorry, if I

had em, you'd be welcome to them. We'll buy em off you. I don't have any. Okay. She leaves and I have another drink and I'm going over now to check ~~of~~ if my little ones are home, going to bed or whatever, and she's pulling out of - it's like courts we live in, parking's right in front of the apt. Nice little apt. So she's pulling out of there and the guy stops, crewcut,tatoos and everything, a young boy, and she says, this is my cousin from Mississippi. She says, Ceil, can't you please get him a couple of pills? I said, I don't have any. I'll tell you what you do - park in front of my house, go ahead in and wait for me and I'll see if I can get you some. So I go. I have a few stashed at a friend's house. I go in the house and get a couple of Seconal, go back to my apt and walk into my house, he's sitting on the sofa, she is inside talking to Dawn, because Dawn's moved back home and Ceily and Blythe, they're all talking, and I hand the guy the pills and I walk like in the hallway back to talking to --- he's following me all the time saying, let me give you a couple of dollars. No, I don't ~~want~~ want your money. Just get a good night's sleep, that was my attitude. Next thing I know, bing, here comes a badge and a gun and you're under arrest. And cops come from all over, and I ~~am~~ am eating a slice of pizza and telling them, you can't do this - I'm a federal witness. "We don't care who you are," and Dawn is screaming, you can't arrest my mother. And the girl is now saying to me, you bitch, you killed my brother - Iset you up. And Dawn is saying, Are you crazy? My mother didn't kill your brother, you jerk.... and the cops are going to grab Dawn and she's pulling me and they go to ~~smack~~ smack Dawn because she's so hysterical, and I grab the cop

p. 38, tape 10, side 1

and now they've got me for resisting arrest. They picked me up from the back of my ankles, threw me and beat the hell out of me. I have blackand blue like this on my leg - they handcuff me behind my back and throw me in the car, hits the newspaper ---

Finally they get me in the police car - they want to know who my connection is, and I make up some name. He's right over by the pool now, you just missed him - there goes his truck - I'm sending the cops all over like crazy and I'm making up all kinds of names - yeah, that was my connection, I just went over and bought a couple of pills from him. I don't deal in drugs, I'm telling them. So they get me down to the police station and you have to sign a thing that you've been arrested. I'm not signing anything, police brutality, you'd better take me to a hospital right away. Okay, they take me to the hospital. The doctor says, I wish I could keep you here but there's nothing wrong with you - my back, my neck, my arm, everything's wrong. So they're gonna lock me up. And before they lock me up, Itell em, you'd better get in touch with this marshal and tell him you have Cecile Monet because I am a government witness and you can't do this.

Okay. We get in touch with them and they bring me down to the Parish Jail - is that a winner. The woman tells me to strip down, she's gonna spray me with a disinfectant. By now, Jerry Lino --- that had never happened to me before and I was really horrified. I don't know for what reason, but they no sooner got me - they didn't even fingerprint me - she had just sprayed me and put a uniform on and the next thing I know Jerry Lino is there -

the narc from NY - and Stuie. They had come - I think they were on their way the night I got arrested - oh, they came down because I called them as soon as Jerry died and they were on their way and I get arrested. So I says, Jerry, what's going to happen? Do I have to go to jail for this, or what? I didn't sell no narc no pills. He said, did you hand it to him? I said yes. He said, well, that's the same thing - whether you accepted money or not, that's a sale. So I said, what's gonna happen? He says, don't worry about it. We're gonna get a bail but you're going to have to spend the night in jail. I said all right. I cried about it - I begged him, come on, you guys can get me out of this and he tells me no, it's too late - I can't get you out of it, you're going to have to spend the night in jail.

The next morning I go to court - I never saw a court like this in my whole life. Kangeroo - everybody's smoking first of all. They have me ina skirt and a little jacket-type striped seersucker Everybody's smoking, including the prisoners. The judge comes in, everybody continues to smoke. $5,000 bail they give me. It was like the mafia had hit Baton Rouge. Well now,

D What do you mean,the Mafia?

This is what Stuie had said to me - Ceil, everybody and their brother knows who you are, that you're here - you and your kids have got to learn to keep your mouths shut and not think that people are your friends and tell them your life history. This is a small town and right now your tongue is worth $100,000.

63A

And unless you want lose _____, you-d better learn to keep your mouths shut?

D That's when he told you that there was a contract out on you?

Right. But I had known there was a contract out on me - they had told ~~k~~ me there was a $150,000 contract - Well, after the arrest, after everybody got arrested.

D When was that, where were you?

Baton Rouge.

D This is before you got arrested? That big bust?

No - nobody had been arrested yet.

D But he said to you ~~$0k~~ $100,000. Thatwas the first time you knew there was a contract out on you.

$5,000 bail for the 2 pills and the marshall service assures them that I will appear again in court and they sign the bond. And I go home - Jerry Lino and Stui are there - my favorite agents and they are now coming down ~~xxxx~~ - the bust and trial are very close - to make sure I don't get into any more trouble and in fact move my children and I out of this hick town closer to NY because now I'm going to have to come in every single day~~x~~ for briefing. So we stay there about - they stayed about a week, fighting with the U.S. marshals - they now wnat to drop me, they don't want to protect me any more, I've become a pest - and I was doing nothing but arguing with them. I had times where I had no money in the beginning, I'd call up this Mr. Cunningham, and I'd say I'm completely broke and there's no food in the house.

He says, what would you like for me to do, ma'am? This is Sunday. I said I'd like for you to get your ass over here and write me a personal check out of your own checking account so my children can eat. He says, I'm sorry, I can't do that and you'll just have to manage on whatever is there and wait for your check to come in. And I was still getting screwed on the money all the time. Until B&DD found out about it, they were not aware of it at all, they thought the marshals were taking really good care of the children and I. So I let them know all my complaints.

So we fooled around, swimming and everything, really having fun. One night - Mark had a gun, I had bought it while we were down there - so the agents were real fun - they'd drink with me, everything, and I had started boozing it up - there were no drugs around. Idrank wine or beer. So one night they take the gun out of the apt. Stuie - and he's shooting this thing. So I says, Dawn, go in and call the cops. Dawn goes in and calls the police and in Baton Rouge, forget about it - he's firing a rifle - they don't send one patrol car. They send 15, rounding the house, sirens, everything. We're cracking up. Stuie takes the gun, runs in the house and hides it.

All right, there was a complaint called in that there was a rifle being shot around here. We don't know anything about it, did you see anything? No, we don't know anything - the police leave. Stuie says, okay, Ceil, you're Miss Mafia, you know, he says, I want to see you find that rifle. I'll give you a few minutes. I went into my bedroom, lifted up the mattress, took it out and he says, how did you know it was there? I said, that would be where I'd put it if the cops came, ya know?

p. 42, tape 10, side 1

So we laughed about that - we used to go swimming every day. They would drown us, Stuie and Jerry - take our bathing suit tops off - xxx and I had a very heavy crush on Jerry Lino and I was chasing him around trying to get him to go out with me and he said, but Ceil, I can't, I'm on a job. If there were different circumstances, yes, I would definitely take you out, but I can't now. I really had a crush on him - I mean through the whole xx trial and everything. I wasn't going to testify unless Jerryy was there - I got to be a brat. At this point, I thought who I was and who I am testifying, and I'm their key witness and Stuie used to say things to me like, all right, let's really ball him out of his mind now - tell him you're not testifying. And I would do just that - then all the U.S. attornies would come into the room - Ceil, you don't realize what you're doing and I xxxxxxxxx thought you wanted to get Herbie for killing Louie and all this - and the attorneys wold be all upset - did I realize like I had taken a half million dollars worth of drugs off the street, and things like that and I would keep telling them, no, I'm not going to testify, and be crying and really make it so they'd believe that Ichanged my mind.

Do you realize all your court cases, now you're going to have to do time for sure and stuffx like that. So we used to pull a lot of tricks, Stuie and I and we were getting ready and they wanted us to move closer to NY and Cheryl was in love with Clyde now. And she doesn't want to leave Baton Rouge because she's leaving Clyde. So I talk her into, she's still too young to just leave. She's 16 years old now and I want her to come stay with me, I'm

p. 43, tape 10, side 1

afraid for her life, that she might get killed and especially since Jerry died, his sister used to go out with Clyde and she was jealous of Cheryl going out with Clyde, so with that, they were always kkkx looking to beat Cheryl up and everything. So I made Cheryl go with me. So they moved us to the Catskills where we were to stay with another witness.

D Where in the Catskills?

Just little cottages - we only stayed there for two weeks. Right across from Jersey - well,

D They stil haven't made the bust yet?

Nothing, but it's very close - so they put me with another witness - Deedee and she's a Puerto Rican girl and she has a little daughter for Blythe to play with and now I don't want any more federal marshals come near me. I will only testify if I'm watched by drug enforcement, that's it. So drug enforcement stays with Deedee and I for two weeks. Σ She doesn't want anything to do with the marshals kkkkkkx either. She's g throwing them off her case, too, a-d her case is the same thing - they had her on the streets for 7 months, wired up, talking off Johnny Capra and everything and she's telling me the whole story. She's been in custody for two years, her brother has killed a copy and they're cutting her brother loose for this and she was a very big dealer and she knew Louie very well. Skkx We had a lot of fun kkkkkkxx together, she was somebody to talk to.

D She knew Louie? What did she say about him?

Oh, she knew _____ - she had seen me a few times and she loved Louie, he was very good to her daughter. He was a real

family man, funny, handsome, she really liked him a lot. She told me mostly about his coming up - he used to deliver to her occasionally and he'd come up and play with her daughter and he was really crazy about her baby and sit and talk to her about his kids - adn she said he was always telling her he was very much in love with me and he really loved his children. She didn't know until I told her that they weren't his children. And she was amazed that they weren't - she'd never believe it about how much Blyth loked like him, and Ceily - and Mark acts like him and walks like him - and you could swear they were his kids.

Anyway, we stayed together for two weeks - Mark went fishing every day. We used to play hide and go seek with all the agents, have barbecues outside, it was just coming around summertime.

Now we tell the agents that we would like to stay together and they think this is a good idea becase it would save them money and we both had to go into protective custody where we were watched so they agreed that they were trying to look for a house that had two separate apts. in it, becuase with my five and her daughter, you know, it would be too much for all us living together.

And she used to cook for the agents. When I first met her Irally thought one of the agents was her husband because of the way everything was honey and babe and everytingg and she introduced them as her husband. I didn't find out until later on that she was unhappy and we were both unhappy in our bungalows and we started talking that it was just another drug enforcement agent. So we had a lot of fun and she had been telling me stories about her being under surveillance and being wired up and shesaid she

had such a fantstic memory, she could have eaten in some restaurant a year ago and she could sit and tell you what she was having, who she was with, what she was wearing, what he was wearing - she had a fantastic memory and how they put her on the streets with like new agents and she'd have to show them how to work their radio - she was just terrific and she had so much heart this girl. Johnny Hooks one time - she was popping and he gave her a kiss of death getting out of the car, made a remark like, let's see who they get first -

No, he didn't know anything. They were just teasing each other. She wasn't sure. They didn't know about the bust at all - it was a complete surprise to all of them.

And the agents liked her so much they gave her a gold badge with the group 62 was our group - and with every agent's name on it - To Deedee - she just had - she said, Ceil, I have no friends left. All of these agents are like my brothers. She used to go to their houses and everything. She even did - the agents were supposed to be watching her, right? Now this guy hadn't been home with his wife in 2 weeks and they were just married, so she said, call your wife up and tell her to come up here - I'll keep watch with the other guy in the bedroom in case Ross Riley comes up - that was the head of their group. Listen, take care of business. She did things like that for them, and she'd cover for them. Like they left her - because they were really looking for us at one time, the two of us, because I had been brought in one time for briefing to - we had to stop and get something at 57th Street

p. 46, tape 10, side 1

in the Federal Bldg., and we're dxx driving down the street and who do we see but Beenzie - this is a guy who works for Louie and everybody and they xxyx see me in the car with two agents. So now word gets back and they x know I'm talking to somebody and they want to know what about. So they were really out to get me at one point. In fact, a couple of times I had so much trouble - this is later on now - (interruption by daughter) Most of the time it was the marshall's fault, because they knew they weren't supposed to drive down xhex this block and they take me right past the barbershop and old man Sonny wouldbe standing there - everybody I know. All they had to do was look and they'd see me, ya know. So now we're moving and Dawn, Cheryl and Mark are on the phone night and day to Baton Rouge and they're putting it all on this one agent, Stuie's bill.

D This is when youre up in the Catskills?

Right. This is Mrs. Bromfield and I'd like to call Baton Rouge and have it put on my home phone number and they did this for quite a while. Then they were using credit card numbers. They had a case against them. My kids by themselves for xxxxxd fraud against the telephone company. The police were xxkx looking, they had warrants out for them. I had to have it squashed. Dawn had a big case in Baton Rouge. Yeah, credit card numbers.

So now they have found a place for me to live -

Wxx Did you know for a fact they were looking for you?

The agents never just told me anything. They have a lot of people working for them on the street - a lot of rats - they got good sources. They'd tell me when I was seen, who I was with, you know, and somebody knows you're cooperating with us here. They

p. 47, tape 10, side 1

don't know for sure, or for what, but they have a good idea. Plus they always had wire taps. Herbie's house was wired unbelievable for quite a while - for over a year, as a matter of fact. - So now they're moving the kids and I up to Birchwood Lakes in the Poconos and Ceily doesn't want to go up there, she decides to go to Florida with her grandmother. I begged her not to because my mother is very hard to get along with and isn't used to having children around anymore, so I told her she's not going to have a good time, my mother's very strict, all this stuff - Ceily insists upon going. Now she doesn't have the proper clothes, luggage, anything. Got to go. Okay, I'll let her go. So I get two marshals, tey tell me now they've picked special marshals to handle me, don't worry about it.

D What was your mother doing in Fla?

My mother has two homes -

So now I'll try the marshals but if I'm unhappy with them, I don't want them. Now these marshals are to cater to me and to my children. They seemed finex in the beginning. I had a woman from Virginia, husband and wife, the guy thought he was just the most gorgeous - remember Steve?, Mr. Handsome - we'd be laying on the floor - they gave us a bungalow $450 a month I had to pay - Birchwood Lakes, very Italian-Jewish resort - pool privilages for $60 extra, we all had pool passes, and it was really an adorable bungalow. You'd look out on the front lawn in the morning and the deer were there - Mark was always catching skunks and everything - so anyway, we'd lay on the livingroom floor and you could look into

71A

the dining room through the tv screen and see what the agents were doing at the kitchen table. This was if I allowed them in the house. I didn't even have to have them in the house if I didn't want to. It was the summer, the mosquitoes and all, I would let them. Drink coffee all night -

D Where were they if they weren't in your house?

In front of the house in a car, his wife - how were the shifts broke down, three and three? Right - a husband and wife and another guy. They took the night shift. On the day shift I had three men. Now this one agent, he thought he was gorgeous. They had 1 little girl and he was an ex policeman from Virginia. He used to sit and pick his nose and wipe it under my kitchen table and we would be watching - going like this - I never hit my kids until I get it up to here. One night she is doing something to really aggrevate me - I got the strap out and gave her a spanking. Well they enjoyed it so much - these two people - they started back and forth, she deserved it, it's good, things like that. I siad, get outside with the mosquitoes. I don't care if you're eaten alive. I don't want you in the house any more. From now on you watch from outside. I just threw out the husband and wife - I said you two can just wait out there. Those two had to sit in the car all night. They were just into my business too much and upsetting me - telling me, first of all I wasn't supposed to use the telephone. The telephone was there in case of an emergency - my kids were calling all over - You're not supposed to use the phone, they'd say. Well then you're gonna have to stop me.

p. 49, tape 10, side 1

Well, it says we're not supposed to allow you - and I just argued with them the whole time. This is the summer of '73. Louie's been dead since Feb. of '72. The agents first came in March of '73 - so a whole year went by after Louie's death. First went to Long Beach, to jail, drugs, etc.

Now, we're going to the pool every day - Ceily, you were in Florida - no, you didn't leave until later, you'd been already in Birchwood Lakes. Now Clyde is getting ready to come up - Cheryl's gotten in touch with Clyde and he's coming to Pa. from Baton Rouge to see Cheryl. I never thought he'd make it. The agents are also telling me, you're not a-lowed to have anybody up here. We're here to protect you and I'm saying, well, I'll tellya, if the boy comes to the door, he's staying here. Well, that's not permitted, etc., etc. I said, you're not throwin him out - I'll throw you out first. So all of a sudden - I was the most uncooperative. I had one of the guys tell me, well, we're not the kids' chauffeur. I said, oh you're not? And I got on the phone to Mr. _____. I said I understand Leo Durocher (one of Leo Durocher's cousins) the marshal up here just told me he is not my children's chauffeur. He said, give Mr. Durocher the telephone, and he found out in fact he was the kids' chauffeur. They were there not only to protect me, but I had no car, no store down at the corner, I was up in this resort. So we'd go to the pool every day and there'd be two marshals sitting right behind me in a car. I f I got up to take a walk to the

snack bar to get a hot dog, the two of them came out of the car and onewalked with me and x one watched the kids. They had shotguns, everything.

D Nobody else at the resort knew -

Well, they started asking questions, because you couldn't even get ontothe property without going through this gate - it was private, so they started asking questions, and this one marshal Jim that we really liked, he told them that I was a diplomat's wife and I was guarded by the U.S. Government and I was here for xxxxx vacation, and I had a great tan anyway, and the summer had just started. The people thought I was Indian or something - so

We had this one marshal, remember him? His name was Ronnie Ennis. He was so much fun. He used to talk like a Puerto Rican and he'd say, I take my japper beer and take my jello jeppy and we go for a ride and and he had us in stitches night and day. Remember Peg Pants? Up here with white socks, pointy shoes, oh he said, Ceil, if you give me Dawn, I'll give you my car. I want to marry Dawn. We used to tease everybody like - they weren't supposed to come in and lay on the sofa and take up all the room, or drink on the job, anything like that, so now I was having so much problems with Steve and his wife that I said, listen, if Steve and his wife come on this tour of duty, you yell, Ceil, bring me another Rhein beer, and throw me a pillow - you be laying inthe middle of the xo floor so they can't walk by and I'll throw you a pillow and make believe I'm offering you a beer. He xxx said, all right, we'll do that. And then he'd say, when they come in,

74A

say, Okay, as soon as this is over, you and Dawn can get engaged. Reallly aggrevate them - so we used to fool around like that. He used to take us in the car, right, and they had those speakers that if you talked it would come out the car? We used to ride in em and when we'd see a guy in a motorcycle, we'd yell, Okay, put your hands up, get off your motorcycle.

And - the kids wanted to go to this Miracle Lake - they had all little sailboats - pretty, yellow sailboats - the kids found the keys hidden underneath the dock, unlocked each one of the sailboats - every sailboat in that lake - and the marshal was saying, you gotta get outta here - your family's crazy. Dawn and I took the sailboat and we rode all the way out and were robbing houses that were just on the water. We robbed all their lounge chairs, locked up for the summer, people hadn't opened their house up yet - we were cleaning out that place.

D What were you doing with them?

Putting them in the trunk of the marshal's car - open up your trunk. Where'd you get that? We robbed it.

D You mean you just went across the lake and -

Right, we took their lounge chairs, we didn't break into the house. So we had lost Moota in Baton Rouge, he ran away, he couldn't stand Blythe. So now - let's see what else -

Now Clyde arrives, walks up the driveway, a marshal or two are standing outside - Who are you? He says I want to see Ceil and he keeps walking. So he walks in the door and yells, Whatcya doin, baby? He's talking to me - and and _____ southern accent,

He comes in and parks and we go and buy a bottle of tequila and bottle of vodka and we start drinking. He brought some pot and Mark and & Dawn andx&herxlxandxhx him - Cheryl doesn't smoke pot - they're gettin bombed outa their mindsx on Baton Rouge pot in the bedroom. Ah, butthe agents are gonna smell it. I said, don't worry about them. I was - I hated the marshal service. Everything gotto a point - one of them, xex she brought all her laundry. I had a wxh washer and dryer in the place - she'd bring it and wash it. And pull things on me like, oh my daughter Tammy never did things like that - her father wouldn't let her get away with that - but then your x children don't havea father. She was spiteful, ignorant woman. She loved telling me stories about female prisoners, how she would treat them, transporting them from one prison to another. Oh yeah, we had this one, she was pregnant, sox I put the shackle on her and shackled her to the floor. I said, but she was pregnant, how could you do that? He'd say, oh, we have to - I'd make sure it was loose enough, but I'd have her shackled to the floor and you could see that this man - they were enjoying it. It wasn't a job to them, they got x off behind it. So they really got on my nerves a lot.

Then I had one marshal - I had a big, huge - his name was Steve also - always polishing his Cadillac - they brought their own car. He was mrried to a little oriental doctor. This is after I'm testifying. I had just gotten off the stand testifying about Herbie. I'm laying in my bed - Mark and I shared a bedroom. All of a sudden the door comes flying open, a gun in his hands, and he's waking me with the other,like this - the marshal - and he is shaking me. He's 6'2 at least and at least 200 pounds.

"There's lights in the house next door, somebody's driving in the driveway. Who lives over there?" I said, you stupid sonofabitch - get out of my room. And I had him taken off the case the next day. I called up and said, there's a maniac here, waving a gun in my face when I'm trying to sleep and Isaid, I almost had a heart attack. So anyway, now the bust goes down and everybody gets arrested.

I'm in Birchwood Lake. They told me the next day - Stuie told me. He says we'll call you and tell me. I said, please tell me all the details - for instance, when they busted Herbie, they waited all night -

D It was at night - this whole big bust?

Right. They waited all night for Hebbie to come home - so here comes Herbie in his Mercedes, driving up the block. They wait til he parks and all and while he's parking, Stuie goes by the car, puts a gun in his head, Bobbie Clark throws himself on the hood of the car with his gun like this - cocked - tells him, Don't move or I'll blow your brains out. And Herbie says get that Indian or Cowboy off the roof of my car - that kid'll kill me. He's shaking like a leaf and he's liable to shoot me. So Herbie says, who are you, they identified themselves and then it went on. They said Herbie, you're under arrest. They gave him his rights and they asked him if he wanted to go in and say goodbye to Josephine. So he said no, he didn't want to. So they told him, Herbie, you're gonna be away a long time, you'd better go in and say goodbye. He said okay. He was gonna

77A

go in and say goodbye to her. They knock on the door and they got Herbie and Josehine's not gonna let any of em in. So Herbie is telling her to let em in and she's gonna let him in but not the agents. She says, the dogs'll attack you and kill you - they have three pincher attack dogs - so Stuie says, Josephine, lock the dogs up. She says I'm not lockin my fuckin dogs up - that's how she talks - you motherfucker, she called them all kinds of things - xhex he said, either you lock them up or we'll kill em right now. They've got a shotgun. So Herbie tells her to lock them up. They go in and I guess she kissed him goodbye and everything, they take him out to the car, she comes out and says, you motherfuckers, if you lift one hair on his head I'll kill you bastards. He's coming home from a hooker, and she's gonna kill them, right? He said, Josephine, get back in the house before I smakc the shit out of you. Now they had just had a baby - how old was he, seven months old?

See pg 70

So they'redriving the Mercedes in and they had gone through the whxlex whole car and they had found a small ax, they found an arsenal of guns. They found a set of rubber gloves and they had Herbie handcuffed in the back and they take the gloves and threw kim the rubber gloves, and Herbie don't want the gloves - aha, you guys think you're gonna x get my fingerprints on xsomethin, huh?

Side 2, tape 10

They said, what are you doing with all those guns and this ax and everything, Herbie? He says, you xo know, when I get outta this, I'm gonna write this wrenching company some letter. They're not supposed to have guns and everything in a car like khxi this.

p. 56

(laughter)

So they ~~ga~~ take him down to 57th St. and they've got everybody. 86 of them, They grab Zambini out of a hotel room, he was balling a hooker and he smelled. They had his arms like this and he's pulling ~~h~~ up his pants, his shirt's hanging out and everything. They grabbed Johnny Hooks, he hid upstairs in his bedroom and Connie's telling them, ~~huxsh~~ my husband loves me and things like that. So they had them all down on 57th St. They had Joey Comfirdi. He had 60 lbs. of cut in the trunk of his car. They call up, right? Who is the ~~a~~ young agent I liked so much - Dawn liked - Stuie's partner, the young kid - well anyway, this is how they got Joey. They called him and said, Mr. Compardi, do you own a gas station on Dunhill Road? He said, no, but I used to. I still do own it but I sold it, the guy's paying me payments every week. They said, you'd better get down here right now, the gas station's been robbed. He says, oh no, my~~x~~ god - they're calling him from the corner, They hang up, and pull in front of Joey's car and see Joey running out of the car, and the agents grabbed him with guns, you're under arrest. They opened up the trunk of his car and said, what's this Joey? He says, Ha, it's not heroine, it's 60 lbs. of cut. They thought they had heroine.

D What are other stories of how they got these guys?

But anyway, they had them all down there including the mother. She came out kicking and screaming, you can't do this to me. I'm a grandmother, because the baby ~~jusk~~ had just been born.

He cut his quinine, bonita - it was probably quinine because that's the best cut. Herbie used to put a good cut on his heroine. In fact I did some of Herbie's heroine after Louie died, with one of his friends Frankie from BRooklyn called me up one time and wanted to get me high when I was looking for Louie and I took the train in and we were laughing, and he said, I got some of Louie's junk here and we did some of Herbie's junk and it was fantastic. I felt it over the methadone, it was like three bags, that's how good the dope was.

D A friend of Louie's trying to get you high?

Yeah - he did time with Louie and he was a junkie and he was dealing for Louie.

So now they've got everybody down on 57th St. and they have the mother sitting there and everybody else in the bullpen. No females. Just the 86 guys. 85 guys and the mother. They bring in old man Sonny, which is Sonny Gold, and he - no, they bring in Johnny Hooks and he says, what are you guys, crazy? You're out of business. You got everybody here. What are you gonna do now? You've got us all locked up. And when they were arresting Herbie, he says, are you feds or state? So they said, feds. So.he says, oh, forget it. I have a few hundred dollars in my pocket, take it. They said, we wish, we wish you'd try and buy your way out of this, then we'd have you for something else. So anyway Johnny Hooks said they have everybody, and then they're questioning old Sonny - they said, come on, Sonny, talk. He says, let me tell you something - don't insult my integrity.

p. 58, tape 10, side 2

There are three things I hate in this world - hookers, pimps and rats. Do me a favor - I'm an old man - I'll do 100 years, but don't ask me any questions becase I'm not gonna tell you mnything. So why don't you guys quit - let the old lady go home. She's a grandmother, she's 60 something years old. What can she do? She'd kill you, that's what she'd do.

We were laughing about so many of the stories, so many of the things - Herbie is a real clown. He has everybody in the bullpen laughing. He tells one of the agents, to Stuie - Stuie, when I beat this case, I'm gonna throw such a party for you guys - there'll be all the broads, all the booze and all the coke you want, right? And I've got the best. So they're all arraigned and bails are set. The bail isn't set good for Herbie - $100,000 bail. Right away. Bennie _____ is still on the streets, a fugitive, and young Sonny - they want Bennie for the same thing they want Herbie for but can't be found and now thetrial comes up and it's time for me go testify.

Oh, I was prepped for weeks - I was going in from Birchwood every single day - it was like an hour and a half - 2 hour drive there. Then I was being preppred right in the U.S. Attorney's office and we were right in Foley Square. The marshals would have me lay on the floor of the car in the back, drive me into the Judge's entrance - you know how it is on Foley Square? The Federal Court House? It's a funny thing, because Louie, Josephine, Bennie, Ceil Sperlman and myself used to sit across the street from that courthouse when Herbie was finishing up his parole time and he was

81A

going back and forth to court there - every single day this was like for a w ek waiting for him to beat that case. So I'm going in every single day and Iwouldn't get home until 10 or 11 at night.

D What were you doing once inside?

I was - I also - listen to this - so now they bust everybody, right? I said - they had Joey x in there and they got the wire that Joey's gonna get knifed in there. Herbie put out a contract in prison _____. So Stuie tells me they're gonna kill Joey. I said, Stuie, get that kid outta here, because that kid'll talk and knows more stuff than I do, believe me. But do yourself a favor, go get him. So they went and they told Joey. They told him exactly what went down - that they knew he had a heavy contract - they were gonna kill him like that day - no exxageration - and Stuie felt kinda bad about it. And Joey's wife Ceil was pregnant - there were three of us named Ceil - they had just had a baby and she's on her second. I begged them to please go get Joey. So they go up and question him and they told him - no, they didn't tell him right up front. I said, when you go talk to him, tell him that I'm testifying about what went down - that you suspect Herbie and they said they couldn't let Joey know at this time that I was a witness. So they didn't let him know for a while, so I said, as soon as you can and feel safe, let him know

D Joey was talking?

It took a little while but he did agree to talk. I used to get all the info about Joey - they'd come back and say, well,

and gets $2,000, now Joey goes into court and they've got the goddamned recording. When he goes into court, they tell him, Joey, you stupid jerk - now we have you for murder. An accessory. So anyway, Joey wound up not doing time, but he was very fortunate.

D When you saw Joey for that first time - you hadn't seen him in a year and a half -

Oh, he cried - he was telling me all about his wife - he said Ceil, I told ya I'd stand by ya. I loved Louie, too. I told you they'd want you back and I'm not gonna just let them kill Louie and ~~x~~ he said, Ceil hates you.

Why does she ~~xxx~~ hate me? For saving your life? Doesn't she realize I saved your life? Didn't I tell you, Ceil, a year and a half ago, when you started driving for Louie, didn't I take Ceil in the kitchen and tell her right there to get you out of this business - that you were gonna get hurt? I said, I begged Ceil. I said, Ceil, if you could possibly talk to Joey, the money's quick and everything, but don't let him get involved. He's a clean kid, a good kid, he's a good father, a good worker, a good husband - I said, are you stupid? She was pregnant at the time and says, yeah, but Joey tells me he's not. I said,Ceil, I know ~~xx~~ what they're doing and I'm telling you, get him out of it. Isaid, if I could talk to Louie - but with Louie there was no talking to.

Anyway, Joey asked about the kids and told them to say hello ~~xxx~~ from Aunt Rosa, that was his little nickname - and I asked him about Angelo his brother and his wife and his brother Billie - all of ~~xxxx~~ em . So we had just kind of ~~x x~~ like a reunion.

Joey said that he never did cuts or he never - I said, wait a minute. You go back and tell Joey - they had us right there at the same time on different floors - you tell him - you ask him, what was he doing driving Louie to Philadelphia in June and ~~xxxxxxx~~ what did he go up there for? They'd come back and Joey would open up and tell them. Yeah, he did drive Louie to Phila, and it was for a drop or a pickup and how much money did he have on him - and Herbie was paying Joey for a cut and the kid was cutting 2 and 3 times a week, $1,000 a week for cutting. He was making $5,000. It was quite a jump. But that's how much of a flunkie poor Joey was. So they finally did tell Joey that I was testifying and they let me see him and Joey hugged me and all, but see, all our phones were tapped - all the witnesses' phones. Joey sold one of ~~them~~ witnesses - Snake or one of them, but they cut his hands off add Joey almost did two years -

Joey sold one of the guys for $2,000.

He said Feds are looking for so and so - Al

D This was when the guy was on the loose.

He's still on the lam - he doesn't even want to talk but they could use him as a witness, he would open up. Danny Kaplan put out a contract and had him murdered. After I testified against Sammy, I said, oh, he really hates me now. He wasn't really hooked in with Sperling. He worked for Louie.

D Did Samy Kaplan _____ ~~xxxxxx~~ this other guy was murdered -

And Joey says so and Joey tells me he wants $2,000

D When did Joey start working for Louie?

He started working more or less as soon as Louie came out of prison.

D When did you speak to Ceil?

I spoke to her after we were in the house in Belmore. And Joey was telling me he just had a little girl and Ceil was expecting any day and I told him I'd love to see the kids and he said I wish I could see your kids - it was like the only family Louie and xx I had, Joey. So I asked him where he was thinking of moving. Ikind of figured he'd move back out west where we were all the happiest, it seems. I said, I'd like to move near ya, Joey. He said, I'd like for ya to too - the kids need somebody now that Louie's dead. So I said, yeah, I knew it - I gave him my telephone number, which at the time xxxxxx I thought was very innocent, but after he sold up x one witness I was scared, and I told Steve and Stuie, you know, I gave Joey my phone number, which x we weren't supposed to do. He wasn't supposed to know where I lived - but we used to have marshals who watched - they knew where everybody was, and I'd ask certain marshals and they'd say, x Ceil, I just left Joey - I've been watching Joey for 2 weeks - and I'd ask how are his kids, and get little bits of info from the agents. Not anything that would harm them

D So Joey got out of prison very quick - as soon as he started talking they let him go?

They put him in custody -

D But outside of prison in a house somewhere.

Right, he lived like I did. Which is a xx prison in itself,

p. 63, tape 10, side 2

because you're not allowed to do anything - I hated it. But it kept him alive.

So now I'm going on the stands to testify against Herb and I'm testifying now against 18 of the defendants which was Herbie,

D It's all one trial or a series?

This is one trial - Herbie, Sammy Kaplan, Sal - who hid in the courtroom, he made bail and they asked me to get down and point out Sal. And I got down off the stand and they asked me to take my time - John Gross was the U.S. ATtorney then - take my time, look around the courtroom - and he (Sal) hid behind the jurors. And I wasn't able to point him out. So when we recessed, I said to John Gross, while I was testifying I spotted him. I told John I had spotted him. He said, forget about him - he was a very relaxed attorney - he beat the case too - Sal - there were only 11 acquitted and he beat it. Eleven out of 85 were acquited. That included his mother. Joey saved his mother. He said, Ceil, I can't do it to the old lady. I said, you stupid bastard - that old lady would kill you and your kids and you can't do it to her? He said, but its somebody's mother. I said you are dumb. He said, I could put her away for life. My testimony wasn't enough.

The first day I walked in, Herbie started laughing and gave me the kiss of death. He went - uh - that type of thing and gave me the kiss. And laughed through my whole testimmny and my testimmny was - the trial was in the summer months,

p. 64, tape 10, side 2

I think itwas around June 27th of 73. I get on the witness stand and they ask my name andwhere where I lived and I told them I couldn't reveal that formy own reasons, my life. Was it true - now John Gross is questioning me and he asks me if I saw the defendantsHerbert Sperling - and each defendant their names and could I please point them out. And if I saw them would I please point them out and if I didn't see them would I walk around the court so I pointed out the ones I saw, the ones I couldnt see I didn't point out. Then he asked me if my husband Louie _____ what he did and I told him he worked for Herbie. He said what was the line of work he did? I said, cut heroine. He asked me how I knew this - Because my husband told me. He asked me how much my husband made. I told him $5,000 a week. How did I know that my husband made #5,000 a week. Because my husband told me and I had seen him getting paid from Herbie Sperling. He asked me if I had ever seen Herbert Sperling receive or give to anybody any money - I told him yes, at one time I saw him give BEnny Marlo $75,000. How did I know it was $75,000? Because it was counted out in piles on the kitchen table and then put into anattache case in his apt. on Spring St.

Where did he get all this money did I know? Yes, I knew where most of it had come from because my husband had given him $40,000 of it that afternoon. Young Sonny had brought up $25,000 in a paper bag and the rest Herbie had, and piled it into an attache case.

Did I use any drugs? Yes. I had once been a heroine addict myself. Is it true I have cases pending? Yes, and what for, - shoplifting, burglary, armed robbery, I named every one of them

p. 65, tape 10, side 2

- xthat I had pending - drug cases. Was I using any drugs at the time? No, I wasn't. Now the defense questioned me.

He wanted to know how - isn't it true, Mrs. M that the majority of the time you and your husband were together you were stoned out of your mind? And in fact you really can't be sure that you even saw your husband receiving $5,000 for pay. I said, no that isn't true. I have used drugs now for so many years that I can function quite properly on quite a lot of drugs. Yes, isn't it true that for the past five months the U.S. Gvernment has been paying you for this testimony? I said, no, the government wasn't paying me for this testimony - the government is paying my rent and for x my food and that, believe me, was all. So one attorney said, isn't it true that the U.S. gov't in fact paid for that pan you have? I said, do you really want me to answer that? So the judge said, do you want an nnswer to that? And he laughed. There were quite a few funny things. A lot of the defense attorneys had no questions at all. I couldn't be moved or shook. And they asked me, why, Mrs. M are you testifying - you are testifying for the money. I said no, thatis not true true. I said, Herbie knows why I'm testifying. He just laughed at me. His mother sat directly in front of me - Herbie was on this sideof her and Herbie was sittingbehind x 2 of his attorneys. Herbie was over here and his mother was right there glaring at me when I walked into the courtroom and Josephine saw me, Josephine got hysterical crying - she came up and whispered something to Herbie and Herbie told her, get out. Saw him right there telling him,

p.66, tape 10, side 2

get out. And she had to leave the courtroom. She had on a little pink suit, she really looked cute. She lost a lot of weight which she needed to - a little fatty - she really looked terrific but she looked upset and tired and all I kept thinking was how bad I felt for her, but even though I was sure at that point Herbie was going to get life, at least he was still alive and she could still visit him. I would never see Louie again, and I felt sure I loved him more than she could ever possibly love Herbie - and my children.

D Where were the kids during the trial?

During the trial I was driven back but I was very heavily guarded - I had two agents drive me in - two agents followed. When we hit NY, I had two marshals in front, two marshals in the car with me and two marshals in the car following me in back. The room that sits right outside where they keep the witnesses, I was in the room with they call him the torch, the murderer, he's the one who killed Patsy Parks - his name is Vincent Percelli and the guy I was in with Barry Lipsky - Barry Lipsky was his _____. This is the one I told you about - he used to bring histelevision, two suitcases, - now this is at the Benny Marlo trial I had met him - he had a ski cap on and a leather jacket and a pocketful of valiums and I told him, Barry my nerves are - this is one trial - I'm not too happy about testifyingand they keep telling me that even thoughBenny had nothing to do with the murder,

p. 67, tape 10, side 2

the agents told me, don't think that he had to go - Herbie had to go to Benny and ask him - tell him I'm going to murder Louie, or get some word from him that - I'm gonna put Louie away? So the agents told me it's as much his fault as it is Herbie's that Louie's dead and if he had said no, maybe Herbie wouldn't have had him killed. So I said, even though they tell me this, I always like Bennie - he was a gentleman - he was know in the crowd as a gentleman, ya know?

So he says, all right, I have some valiums - like 5 mgms, the yellow ones - he poured me out about 8. Now Mark was with me now also - he was going to testify. They were bringing him in as a rebuttal witness because Benny got on the stand and he said he had never met Louie Moretto. So they brought Mark in and Mark testified that he was in Benny's apartment, Benny bought our living room set and the defense attorney asked Mark - you love your mother very much, don't you? And Mark says yes. He says you'd even lie for her, you love her so much. Mark says no. This is no lie that I'm testifying against Benny - Benny knows why. And they said he was a fantastic witness - he cried on the stand every time his father's name was mentioned and he said to one of the agents, Stuie, he had a belt with a pot-leafed buckle - the belt has pot leaves all over it, and he has long hair, a little work shirt on and a new pair of dungarees. So he said to one of the agents, is it all right if I get up on the stand with this pot leaf on? They said, yeah, go ahead, ya know? Like - funny.

90A

Baryr R Lipsky really kept me laughing - he was telling me about Louie and how funny Louie was and the things he did - he said, Louie is such a liar - he gets away with so much stuff that other people on the streets wouldn't because of his look and everything. And he was saying how much he liked Louie - he was just a fun guy - but he wouldn't go for spit - spend his money on a girl? And everybody always told me things like that about Louie. So Barry gets on the stand and he has a silver watch on - kind of ɑnxax a hanging chain bracelet watch, and it's ticking so loud that Judge Pollack thought it was a bomb and wants him and the watch to be removed to the witness stand and he's to be brought back without the bomb.

Mɑdx He'd be on the phone almost all the time talking to his girlfriend - Barry would - and he got very friendly with Mark because Mk Mark went in a second time after I testified - they brought him in again by himself and Mark had a blast. It was just before Christmas last year and he made about $400 and he put it right in the pot business and bought himself a pound of grass and a mess of acid and doubled his money up and partied - he must've had money in his pocket - even after Christmas shopping, because he doubled and tripled his money.

Girl[redacted]: He took me, his his girlfriend and my boyfriend out and we went to this bar and we drank all night - we went to a prom.

And Mark had a friend who had a hog - and what was this hogs name? Susie. He'd say, my hog - I have to go home and feed my hog and -

Cecil was funny -

Girl: I went out with him.

So the trial I enjoyed - it was like I was on the stage performing. It was not open to the press. It - they had told me in the beginning that Stuie had told me that it was going to probably be televised but they would probably do sketches because the federal gov't doesn't like too much publicity. First of all, the gov't gets 90 percent convictions. It's not like the state or anything - they don't like the publicity. Like it was in the papers, the bust, and everything that went down but that was it - they didn't carry it on.

D How long did the trial last?

The trial lasted about 3 weeks -

D And you were still commuting from Birchwood Lake?

Now I was only on the stand about 4 times for Herbie - I had to keep coming back in to stand by because they thought the defense was going to recall me - but they felt itwas a complete shock - Herbie didn't know anything about it - that I was going to testify. They really felt they surprised him. And not only that, when the girl got on the stand that they shot her boyfriend, then I had given them that other girl her name where she was the one on the telephone that she said to me - Louie only needs my apt. to work in. He used to come up and - then they had the Red Fox, I told you about her - she was stoned - she had a lot of money - her parents had a lot of money - but

p. 64a, tape 10, side 2

but she liked barbituates. I told them about Deedee. Well, Deedee testified in the Capra - I never testified inthe Capra case. I knew Johnny Hooks but I didn't know him - I mean I knew he was inthe business - but his front was gambling and I never discussed anything with Louie. I didn't like Hooks, I didn't like his wife Connie either. They were too showy for me.

So I testified and I was relocated.

D You testified and what came down?

Herbie was convicted and he got life - his bail was $100,000. His bailwas met 3 times - the maid even put up his bail sometimes. He had when he was arrested $500 on him pocket money and of course Herbie's matching jewelry. He had his ring which matched his watch and his cufflinks matched his ring and his tie clip matched the whole thing. The IRS came and took the $500, IRS came in and took Herbie's ring, watch, etc., and the agents the night they arrested him said, hey, Herbie, that's a real bust of Napoleon - I understand there's only ten of them in the country. He says, yeah, by the time I get out, it'll be worth a lot of money.

Add Herbie had quite a lot of stuff in his house. So the bail was met 3 times and every time it xx was put up, the IRS came in and grabbed it.

D You mean the maid would come with $100,00 and the IRS would say, I'll take that? How come they'd take the money from the maid - they didn't know it was Herbie's money?

Where did the maid get $100,000 IRS now wants to know.

(GOODBYES TO BLYTHE)

Clyde and Cheryl now -

D Wait - so Herbie nevr made bail. He's still in jail. So when he is up for parole or pardon?

He's got 90 years plus life

D All for drugs?

No - he has criminal ~~xx~~ enterprise, they got him for tax evasion - Herbie was telling - what do you mean?when they busted him~~x~~ - I'm a salesman at [redacted] I make $180 a week. They said, oh yeah, Herbie? How come you're living in a $285,000 home? You have ~~xxxxxxxxxxxx~~ four boats and a Mercedes Benz and your wife is wearing a 7 1/2 karat diamond ring on her finger and you've only been out of prison six months. Herbie said, ~~xx~~ Hey, I'm a good salesman.

(The girls are talking here - so low I ~~xxx~~ can't really pick it up but don't think it's important -)

So I finish testifying and Cheryl and Clyde don't want to wait for me - they want to go back to Baton Rouge and Cheryl begged me

D I still want to go back to the trial - the trial lasted 3 weeks - Herbie's never getting out of prison.

. Yeah, but at this point he hasn't been sentenced ~~x~~ yet either. He isn't sentenced until later on. But they've all been found guilty - Benny,Marlo is a whole other trial.

Joey is never tried - Sammy Kaplan beats his rap - Sammy beat it because all of my testimony was hearsay - you know, I didn't see them take off the Cubans - I never saw Sammy with the

p. 71, tape 10, side 2

coke - it was all Louie, right? Now everybody is convicted and they are going - except for the mother - she's acquitted and Sammy and Sol are acquitted - Peter _____ is still a fugitive - ~~xxxxx~~

b Did anybody say anything to you?

The mother got up in the courtroom and said, you're a goddamn liar you junkie bum tramp - I don't know what you're trying to do to Herbie - that's my son and I'm a grandma - she carried on like some kind of afool. And Herbie kept calling me, you junkie bitch

D You mean in the middle of the trial?

The judge said if he heard one more word out of them he was gonna contest the court. Old Man Sonny just sat there and stared at me and took everything ~~xxxx~~ in his stride. Quite a few of them just looked at me. Herbie had a lot of names to call me.

b Did you say anything back to them?

No, never lost my composure - the U.S. attorney said I was a fantastic witness.

D Was Stuie with you?

No, there were marshals - I sat in the witness stand and a marshal sat here xx - and right at the end of the juror box and one marshal and the courtroom was surrounded - marshals ~~xx~~ all over the courtroom and quite a few students came to see the trial.

p. 72, tape10, side 2

No pictures were allowed to be taken or anything like that and they tried to make as much of a fool out of me as they possibly could. You know - you're a junkie, is it true you're pending trials, you're burnt for this and that and isn't it true that Louie was ~~ix~~ a junkie too? No, no, everything was no. And I didn't cry -

The kids now were staying with the marshals at home and they were asked not to leave the house - to stay up at the house as much as possible. So Cheryl and Clyde are getting ready to go back to Baton Rouge. Cheryl's decided that she wants to go back with Clyde, Clyde's gotta get back because he was on unemployment then. So I tell her she can go back and this is right around her birthday - about two weeks - it was in July - two weeks before her birthday, so I gave her $50 and another $20 to travel on and her and Clyde decided to hitchhike back. Oh, it would be fun and all - so we drive her - another agent and I - a marshal and myself drive her into Jersey, I believe so they can hitchhike and put them on the right turnpike. So they hitchhike back to Baton Rouge and

D Weren't you worried about her?

No, as you can see, my kids can all take care of themselves. They are really quite - I could leave them for days and they'd all be fine.

So anyway, they go back to Baton Rouge and

End of tape 10, side 2

D So the xxx trial's over and -

Now I start deciding - the kids and I where we want to live for the rest of our lives. I want to go to California. Everybody else wants to go someplace else. This one wants to go to Miami, Dawn wants to go back to Baton Rouge. Okxy, Cheryl's calling now, she's arrived in Baton Rouge and - oh, while those marshals were watching me, listen to this - one night they're driving me back from a briefing. Now the marshal, Leo Durocher and his partner pull into a bar. Now xxxx I'm always supposed to have 2 marshals with me at all times. One marshal drives and sits in the front, one marshal sits behind me. Once we get out of town. So we pull into a bar, I figure he's going to the bathroom or whatever. No, let's stop in and have a drink. Oh, fine, I'm xxxxxxxx game for that. We go in and have a drink - we get back in the car and these two guys like close in on me. They're ready to party and they figure, - cause when they even came on the case, they didn't even pull into the driveway when they said, wow, this'll be a ball. They saw Dawn myself and Cheryl - three really nicelooking xx girls. So these two girls think theyre gonna make it with me. Nothing happened, but both of them sure tried.

Then one day when we had gone swimming - our pool hadn't opened up yet - we were going swimming over at their hotel - one of the marshals gives x Dawn $20 to come up to his room. Another one of the marshals propositions the kid. Nothing ever happened

there - I made her give back the $20, but she told me about it and we laughed about it. So now we're getting ready to relocate and Cheryl is in Baton Rouge and now is the time you get all your furniture - I never received all my clothes, nothing. I decided - all right, we'll move back to Baton Rouge. That's our permanent location. Now they give you $1,000 ante- they pay your rent and air fare and that's it and all your furniture is to be moved as soon as youcall them up and tell them well, I've got an apt.

D There were more trials, right?

Yeah, but wait - I'm finished as far as they're concernedx for that trial.

D New identification? New last name?

Yes, everything I'm supposed to receive. Everything is - I'm supposed to get everything as soon as I get an apt. I call up Cheryl and Clyde and say, okay, we're moving down, find me an apt. Something nice. Cheryl and Clyde get me an apt. Before I left the Poconos, I gave the marshals an address of where I would be living at. Cheryl and Clyde put $50 down to hold the apt. and they moved me into Gramercy Park - nice apt., four bedrooms, two baths, nice and big - right near the school, it's like a country area.

D Now at this point did the agents tell you there was a contract out on you?

There is still a contract - $150,000 - that was Herbie's - he was going to get me.

D Did they have it on tape?

No, they didn't mention it was on tape - they told me now - they still had Benny Marlo, Bunky Sample, and Peter S_____ and Peter they know was a murderer for sure, right? Benny Marlo - if he saw me, they explained to me, he might kill me. Herbie ~~and~~x wouldbe the only one who was gonna go out of his way, he felt.

D Were you still scared?

Yes, I was scared, but I had gotten my point across - I felt - now listen, if he kills me, as long as he doesn't cut me up - and I still say that - as long as he doesn't take the hands and everything - he just shoots me, that's all I really care about and I always think, if they're going to kill me, what they're gonna do is, since I'm a junkie, they're gonna give me an overdose. Unless they want it known that they killed me, they're not going to dismember my body unless they want the two put together - Louie's and mine. They'll just give me a hotshot, that's all. Overdose.

Anyway, I was afraid, but I was glad to get out of all of it, I was glad it was all over, and I felt I really had a chance for a good start. My rent was only $190 a month - I had to give a month's rent, a month's security, and then to put the phone in $50 and to turn the electric on. I never received new identification. Never. My kids went on - the only thing that they did to ~~xxxxxxxx~~ ~~xxxxxxxx~~ protect me as far as it was was to relocate me and they had my children's school records. In other words, I didn't even have to send for them. The kids never even received their school records in school. They were always hounding me about that.

I have complaindd about everything. We went to Baton Rouge and for three months, I'm not exaggerating, we slept on the floor. We

p. 76, tape 11, side 1

We had no refrigerator, because the apt. didn't have one - we were waiting for mine. We ate everything out of an ice chest. We had to buy 2 or 3 bags of ice a day to keep whatever food we had cold. We had no dishes, no pots - nothing.

D What about [redacted] drugs?

Well, I was working two jobs. With the money they gave me, I got an [redacted] apt., I paid a month's security, a month's rent, I went out and bought myself a car for $300, and I got a bicycle, bought a few new clothes for the kids for school and Igot two jobs. Dawn and I got a job working days in a _____ Pancake House. Cheryl by now was getting ready to get married and I worked when I got off that job as a cocktail waitress in one of the better spots in Baton Rouge. So I was working from 7 to 3 in the morning in the pancake house, and from 8 or from 6 to 2 in the bar, going home and sleeping, taking care of the house. There was no type of drugs. Plus I always kept a good, clean house and everything. So I was really busy.

D What was Mark doing?

Everybody's in school - there's homegrown pot down there - not only that, they found a new drug now - it's a hallucinatory - it's mushrooms. You boil down the mushrooms and you drink this muddy, muddy water and you trip and it is so exciting and it's terrific, we all loved it.

So now I'm working and Dawn comes into the bar one night with one of her boyfriends and she's got some purple ocdots with her, or sunshine. Here, she says, this is the greatest,

[redacted]

p. 77, tape 11, side 1

just a half a tab , mom, we'll have a blast working tonight. Okay, I drop the half a tab of acid and this is the time that Perkmmn (?) is doing the story. So anyway, I drop it and I can't work. The bar has w two levels. And I can't work, I'm trying to walk and evrything is higher, I can't see, I've got a handful of money, and I'm yelling, "Who gave me the ten dollar bill?" instead of knowing to go where to put the change and I'm really stupid and I'm asking the girl who's making the drinks, hey, how am I acting? She's-a head too, and I told her I just dropped some acid and I'm tripping my brains out. So Ed Kirkman is supposed to pick me up that night from the lounge, but I'm a little leery of him because he's asked me to come to his hotel room by myself but to do the story. And I thought thiw was kind of strange - he took me out to lunch and he was very nice and everything, but I'd rather work in my own home - I'd be more comfortable there.

He's supposed to pick me up from work that night and maybe knowing all this is another reason I went home early. I called my house and told him I'd gotten sick, would he please come in the morning. So we're all sleeping on the floor - every morning we have to get up and fold up all the blankets.

D Why did you decide to do the story for the News?

Well - I was so tired of not having anything, no clothes or anyhhing. I called up the marshals, I called up Jim _____,

191A

I called up Stuie, and said, listen, either you people get my furniture here right away - I don't mean next week, I mean tomorrow, or thefollowing day, or you can tell me it'll be here this week, or I'm calling the newspaper. What I'm gonna be sayin about you guys - not D&D - Drug Enforcement, but the marshals service - I'm really gonna have a lot to say about you. So - no, no, Ceil, please don't wait - I'll try and trace it, it's been lost - they give me a million stories, and especially the marshal service - they didn't know anything about it.

I didn't get any help there. Ed Parkman had written a story about the drug bust in the Daily News - said there were 86 drug busts and I read his name in the News, called up information, got the number, called person to person to Ed Kirkamn, and I said, Mr. K., this is Ceil M - I was a witness in the Herbert Sperlman case. I laid out my whole story for him. I said we have been relocated, I have never had new identification. My children are still waiting for their school records. I am no longer in protective custody. I've been down here now three months. We're still sleeping on the floor - I have two jobs trying to support my children. I used to get child support - I'm not receiving those checks, it's very hard with 4 and 5 children, and no help - I can't get any welfare down here - I just told him the whole story. He said, I'll get back to you, I don't know if we want the story. Give me your number at home and give me the number where you work. I did that. Then

102A

I get a call right away back from Drug Enforcement - one of the agents. Who did you talk to - what newspaper writer - we have to check him out. You know he might sell you down the tubes. You might be signing your own death certificate. I told them who and they checked him out and told me, well, he was a fairly honest reporter and that as long as I didn't discuss the trial too much to go ahead and talk to him. So I told them I was going to.

He came down. The very next day they were unloading my furniture at my front door. The agents swore that it wasn't the press. That they got on it - everybody took credit for it but it just so happens they said the furniture was in Virginia lost someplace and they had to call special men in to drive the truck and everything. Half my stuff was gone - half of it was broken. It was just terrible. Then I'd call up and tell them well, this is missing - my lamps - I had bedroom lamps hanging, cut glass - Spanish beautiful lamps - antiques - we paid $450 for the set and it hung over my night tables in my bedroom. I never saw them. Kitchen table torn apart - it was like patten leather - they were sliced. Everything was ruined. Legs missing off the dishwasher - Cheryl's whole canopy to her bed missing. A post missing to one side of the bed. Everything was just ruined. They had packed - whoever they send in to pack in Long Beach - I had dirty dishes in the sink - they had packed the dirty dishes instead of rinsing them off. I had a big can of some kind of split peas - but a big ice cream can of them. They poured them into enormous bowls - like tupperware

bowls - and didn't close the tops so there were split peas all over everything. Just thrown in the box. We didn't know where to start first. My living room chair - the arm was like hanging off - the chair was so expensive, like crushed velvet - it was just ruined. Everything was seven months or a year and a half old - and it was taken care of - no kid or dog ever jumped on it, it was like new. So there were even television sets missing. A mess. K Dawn had 3 or 4 suede jackets - I think she came out of this with 2. Really bad.

Now I'm relocated -

I complained nothing happened. The place that moved the furniture told me they didn't even know who I was that the drug enforcement would have to get in touch with me because everything that was brought to me was drug enforcement. Even the things they shipped to me by plane - Mark's motorcycle was crated. That wouldn't start, wouldn't work - he had to spend so much money to have that fixed. On clothing they had shipped to us air freight. - I had go x down xxx with the station wagon and make two trips to the airport to get all our clothes down. Ripped, torn, it looked like it had rained on it wherever they kept it in storage. Everything was ruined It was like we had gone out and got a whole secondhand mess of garbage. And nobody was doing anything about it.

Now Cheryl gets married - everybody else is in school, except for Dawn - she decides to quit school. Mark is dealing his pot all over the place, always buying grass - really stoned.

Then he decides he's going to start ~~his~~ getting high with everybody else with towelum??? - a drug that's very popular in Baton Rouge. And it's very easy to obtain down there, you just call a dentist and tell him I have an abcess and he'll call in a prescription, it's morphine extract and you cook it down and it's good - very good. So Mark is shooting T_____. You shoot it. Cheryl and Iare shooting and Dawn starts getting off herself. So we're all getting high on that and Clyde and Clyde gets arrested for barbituates and his mother blames Cheryland myself because we're addicts and she blames this family for Clyde - Clyde's been using drugs before we even met him. But the kid's never taken a bust, so his mother of course blames us.

It's a hick small town and the people are whiney - ma'am, sir, it just drives you crazy - half the things I don't even knowwhat they're saying. So I'm not too happy there, I'm not dating anybody, I'm calling John Costelli to please come down and visit me. Finally he does - he flies down, takes me out, buys me a nice dress, $45, he tells me now he's making about $800 a week. He's a carpenter and he's going into his own business. He just bought himself a new bed and he's got that -.some kind of nice little truck and had it air'conditioned, stereo - it's pretty expensive. So Dawn - she doesn't care for John and I would really like to get married, you know & and let him support me. But I can't go back to NY and he doesn-t want to live down there. So he goes back and I call him and write him and everything, but he really doesn't want to be bothered,

105A

I never caused the poor guy anything but pain. So I don't bother seeing anybody any more.

Now Dawn is going out with this guy all of a sudden with a brand new _____, 29 years old - they came into the J Club where I'm working one night and the guy says, do you know who I am? I said no. He says Sonny Bold's nephew. I says Bold? Yeah, I just left Miami, I'm down here on vacation and Ireally like your daughter. Phew, I says, stay here for a minute, I'm busy. I go to the ladies room - boy I got on that phone. Are you guys crazy or something? I'm down here in Baton Rouge, and you know who's taking Dawn out? Gold's nephew. They said, all right, Ceil, can you get his license plate? I said yeah. Go out and get it and so I did and came back in and told them. They said, all right, we're gonna check him out. Just play it cool.

Two agents came into the bar in about 20 minutes and I told Dawn - he says, here, let me get you high, I've got some 714 - that's a barb - so he givesme 2 of them and I popped them, and I told Dawn, don't take anything he gives you. I don't know if he's trying to poison me or not. So they come in and I point the guy out to them. I tell Dawn - go home - so he says he'll drive her home. So I said, okay. So I know she's gonna be followed now. But I want her to go right home, and I explain to her - I don't know what's goin down, but this guy could be trying to kill you.

D What did Dawn say to that?

Qkx She thinks it'svery funny - Oh, no, maw, everybody's trying to kill me. Will you stop? He doesn't even know who we are. I said, why does he come up with this Sonny Gold for if he don't know who we are? Whydid he even mention it? So he drives her homeand they check her out. And it just so happened that the kid hadn't seen his uncle in eighteen years or something like that - didn't even know he was busted - didn't know anything - and he wasn't thereto kill us and Dawn mentioned New York and this and that and his uncle lives in NY and he came up with this Sonny Gold. Dawn must've said to him, well, I know Sonny Gold, he was a friend of my father's. And that's how he came up with, I'm Sonny Gold's nephew.

So now life goes on about the same except I've quit the job at the J club, it's too much for me. Axxx And we all take apartments, Cheryl and Clyde xx and her husband - Dawn and her boyfriend take an apt. downstairs which I pay for, and Ceil, Blythe, Mark and myself take an apt. upstairs - a beautiful brand new apt., paying $250 a month for three bedrooms, carpeting, drapes, and all my furniture I had it fixed and Mark wrecked my car, now I have no car.

. I'm working one job now -

D But you're making some money, youre not dropping too many drugs -

But my kids are spending my money as quick as I can make it - Dawn and her boyfriend are dealing drugs so I don't have to buy any more - got a little speed and a little coke - anything you

really want, plus/if there's nothing else around to get high on, you can always go out in the fields and pick some mushrooms. So I'm not doing too much drugs or anything. One night this kid, Animal, comes with his wife knocking at my door - he's all bloody, his wife's all bloody - their house was broken into and could they please stay with me for a while.

D How did they get bloody?

Their house was broken in and they got beat up. Could they stay for awhile? Sure - I don't have too much money and I can't afford to support them, they're welcome to sleep there. So they stay there, she's not working, he's not, so I'm more or less supporting them. But he's got this gun - a big gun - it's supposed to put a big hole in you

D A 357?

Mark loves the gun and everything - they're playing cards all night, he and his wife and Mark and Mark is stoned out of his mind on pot. He's throwing parties all the time in his room. Mark's 15, his girlfriend is sleeping over - she's walking around in a see-through nightgown. When he's not in his room lifting weight and smoking pot, he's in there sniffing scotchgard or Pam, but he's really getting stoned a lot now and when he cops, he comes home and says, come on, I wanna turn you on, maw.

Go into a drugstore down there and tell them, listen, give me a partypak, 26 1/2 insulin syringes - I'm a diabetic - and for 17 and 11 cents apiece, I guess you can buy 12 for $1.12, or $1.15, something like that. So it's not hard to obtain _____ down

there. Anyway, one night my son-in-law - we're over at my son-in-law's and my son-in-law gets grabbed. The kid's got a Reader's Digest in his hands and he tells my son-in-law that your mother-in-law is gonna get blown away.

D Who says this, Animal says it?

C No, some boy - some young kid - he's got a gun too -

He tells that to my son-in-law, Clyde. Where is she, that they're coming from New Orleans and they'll blow her apt. off the block or they're gonna kill her. Well, that was all I had to hear.

D Why did he say that?

C We know this is Moletto's old lady and he's got the Reader's Digest ~~xxx~~ in his hand.

D He's just a kid.

C Right, but his father's connected or something they were telling me - the father was connected in NY and the kid figured he was gonna make a few dollars turning me over to New Orlens, the mob in NO and they were going to come. So the agents come and they take me right out of my apt - that same night - put me in the Belmont Hotel. I'm not allowed to go back to my apt. They take the kids and the wife that's living with me - my son-in-law and Cheryl- Cheryl's got a puppy now - so they give us the suite - it was about 6 beds in it. We're all packed- we're all over the place. But they don't tell me now I can have room service. So we've got a room but nobody can eat. I can't even go back to my job. So - what happens - so we stay there.

When are we moving? Now they're fighting with the marshals. The marshals do not want to move me because of the newspaper article. Because the newspaper article had such bad things to say about the marshals - they don't want anything to do with Moletto. Now I'm laying up in the goddamn room for three months - the kids and I - we're in custody again. Until they finally decide to relocate me.

D Wasn't there another trial at this point?

C Right - while I am - no - his trial was just before Christmas - Benny Marlo's. It was after that they moved me. Iwas flown in.

D Let's talk about the Belmont Hotel first.

C Okay - well I stayed there until they moved me.

D Did you party?

C Well, there were drugs - an awful lot of T_____, because everything was put on the agent's bill - I had phones - I used to call up the dentist, tell him I had atoothache, I was from out of town, I was allergic to codeine, my dentist in NY used to prescribe this drug T_____. I told him what the pill looked like - would he please call up a druggist and prescribe some for me? Okay, what druggist are you near - etc, etc. Called up the drugstore - Did Dr. so and so call in a prescription for Mrs. Miller at the Belmont Hotel? Would you please deliver it - and they wouldand whatever else I needed like toothpaste, shampoo, etc., - I'd sign it on the bill and I was getting all my drugs now through the Drug Enforcement too. The bill was coming to $1100, $1,000- $1500. The Drug

Enforcement was paying this a week. The kids were eating steaks, lobster, stuffed shrimp, ham and eggs, bacon - Dawn decided to move in her boyfriend now - so we've got Dawn, Cheryl, Mark, Clyde, Shane, the dog, and Animal, his wife, Ceily, Blyth and myself - ten people up there, playing cards, ordering drinks, everything.

D But you couldn't leave?

C No - we all had to stay up there. Finally, Animal and his wife, I told them I couldn't stpport them any more. They were welcome to my apt. If you wanna take your shots of getting blown off the block or somebody thinking you're me, you're welcome to the apt.

C Now all the time I'm staying at the hotel, my rent is building up over there - I'm paying $240 a month.

D The only reason you're in a hotel is because of the article in Reader's Digest.

C The article and t hey had this hotshot kid and they're not sure now - Drug Enforcement - whether - they pick the kid up and question him but they haven't found out his connections yet - how he knows, what - but they know they gotta move me outta town now. So they're fighting and Jim Lavin is sending teletypes like crazy - do you realize what thiswoman did ? She just finished testifying against Benny Marlo - even her son put his life on the line and we may need her in the future for Bucky Samples and Peter Salanari - they were arguing back and forth with Washington.

D Tell me aboutthe trial now - Benny Marlo.

Benny Marlo was still while I was in the Elms Apartment. I was flown in to NY again - went through the same thing except now I had drug enforcement agents watching me and I stayed at my mother's house because I was briefed and while I was briefed I stayed at the Holiday Inn by the airport - Or the Travelers we stayed in this time. And I got to visit my mother that time - I hadn't seen her in about a year - and I testified that I knew Ben Marlo - that he was Herbie Sperling's partner and Ben Marlo just looked at me - never sadd anything. I testified against Ratface, which I don't know his name to this day. He stodd up in the courtroom - he had a woman lawyer - his lawyer's husband was doing time in Louisburg. His lawyer, Judge Pollack - but the Judge constantly was telling her he was going to hold her in contest of court - she was late every day. Her client never shut up. He got up and yelled at me in the courtroom. Goddammit, you're putting all these friggin ~~junkies~~ junkies on the stand - and railroading us guys, framing all of us - just like you did in the Herbert Sperling case? Right?

Right there he like sold himself - ~~you~~ he swore that he didn't know Herbert Sperling. "The ~~bitch~~ bitch doesn't even know me." So the attorney comes into the courtroom and ~~says~~ she says, isn't it true you don't even know Ratface, or whatever it was - she didn't call him ratface. Isaid, no, it's not true, ~~I~~ I do know him. She said, when the U.S. attorney asked you if you knew anybody else in the courtroom, you - the court recessed and you came back on the stand and then picked out my client.

112A

He asked you again do you know anybody else in this courtroom? I said, you didn't recognize my client at the beginning. I said, that's right, I didn't recognize your client in the beginning. I only know him as Ratface - when they were saying, did you know so and so, they called off the names - I don't know him by that name.

And isn't it true, Mrs. M, because you were too embarrassed because you were lying. I said, no, it's not true. And then I went on to tell her where I knew her client from. And his wife stood up in the courtroom - a redheaded _____ hair. She said, you don't know my husbnad, you damned junkie. You know you don't know him - you know you're lying. So the Judge told them to get out of the courtroom and/if she could calm down herclient, they could return.

Ben Marlo is still out on bail waiting for a repeal is it? What is it called when you go for a new trial? It is an appeal. He's waiting for an appeal. Add everybody else was convicted.

D What was Ratface's sentence?

C I don't know . This was right before Christmas of 73

D So now you're in Louisiana at the Belmont Hotel.

C In the hotel we finally agree to relocate and I am asked where I want to go again and we decide on Miami - that we should have a good time down there. I figure I can work, I can get a waitress job - the weather's nice, it's a lot like NY.

(Kids talking)

C So we decide - one day they come in and tell us - like they keep telling us - tomorrow we should know. One day they finally

come in and they tell us - all right, you're definitely going. Tomorrow morning you have to be down at the Federal Building in Baton Rouge and you pick up your airline tickets. Well, that wasn't true at all. We went down there and picked up $1,080 and they made plane reservations for you. Now

D Why is it a $1,080?

C That is the sum I'm allowed for the amount of xxx people. And now they tell me that my furniture will not be following me unless I pay xxxx $920 to my landlord because they are - the U.S. Gov't is refusing to x pay for my furniture. Now I would never have lost my furniture if I wasn't put in protective custody. xxxxxxxxxxxxxxxxxxxxx They still have my furniture and x if I pay xx the $920, my furniture will be moved here. Once I have an address, the government will pay to have it moved. And I have to sign a paper for the government saying that I release them. In other words, if anything happens to me now, the government is

D Who told you that?

C The U.S. Marshal.

D Youmean they didn't give you a choice?

C Right - either you sign now, or we don't xx give you any money. Now they had done that to me a cople of times too. And there was a big fight in Washington. They had tried that when I xxx first came down here, when I told you the government didnt xxx want me any more? They tried to drop protecting and they wanted to move me to a safe

house in California - a big house where there are a number of witnesses living in it and it's like a jail. It's like a halfway housw. And the government fought it - drug enforcement fought it - and I was given protective custody.

So I signed, I got the $1,080 - I paid for our plane tickets. We carried almost everything we couldas far as television and sewing machines - but it couldn't be insured - because we werent getting our furniture unless we m paid the $920. And we woulda had about $100, so we left the furniture hoping we'd get the money together somehow.

Now Cheryl tells me h it's still in storage over there and if I send the guy $:20, I'll get it. So once I do get an apt. down here, that's what I'm gonna do.

That's probably where we should end the book - without saying where to.

D There have been no more trials - just those three?

C Well, now I'm supposed to come in for Bucky Samples. Well, I've been asked now for the last month - to come in for briefing into NY. Ceily's favorite - Bernie's people will _____.

Girl: The end of the book should be - and it goes on.

D Just let me ask you somequestions - what was the address of the place in Belmore?

C 2244 Legion Street.

D You mentioned something about incest - what was that?

XXXXXXXXXXXXXX (Mans voice) I don't remember your going into it into detail the way you did with me.

D With Janice?

C No - I told him how he was giving her head and she had a

115A

sister who was an albino -

D Where is Vic right now?

C He's in Comstock finishing his 25 to life - so they figure with the 25 to life sentence, he's eligible for parole after 13 years and he's done now 10. Of course - he had done 7 when Louie came home.

D He couldn't done 10.

C It couldn't been seven when Louie came home because he was out when Louie was in.

D Well then he did five. He went away the same year.

C So he's done something like that -

D Willie getting the doorman back made absolutely no difference at all?

C Well, he was denied his last appeal. I was just telling Gary - I have his sister's phone number, Roxy. Her husband's a cop. Now I'm gonna have Phil get in touch with Roxy and see if NxEHx I can help him, once I get some money. Because I know Louie wants him on the streets, and I tell you if Vic had come on the streets right after they killed Louie, Herbie would be dead today.

C I wanna see what I can do for him, if he needs money for a lawyer, or whatever I can possibly do.

SIDE 2 of TAPE 11

C Everybody thinks of them all as Moletto.

C When I talkEd about Ceily and Mark, it's okay to - I think I should, it's important

C Yeah, (muttering)

D What about Al? I'm not going to use his name, of course. Are you in contact with ~~m~~ him?

C Yes.

D Isn't that a little dangerous for you? Being in contact with him? You don't seem to be in hiding much.

C First of all, Al has Mark. And up until he took Mark he didn't know where we lived or if I was still using the same name. Nobody knows him. They knew of him.

D Next time you speak to Jim L, he's in NY - ask him to call ~~him~~ me. For your own protection - when I show you a copy of the book, the manuscript, I think it would probably be worth showing it to ~~y~~ him also. If he says it would be a good idea not to include this or that, we could do that. If you have that much confidence in him - as a friend, not as a government person, because I don't want to get involved with the government in any way.

C At one point, when I mentioned this book ~~xxx~~ to him, he said, Ceil, the government may have something to say about this. For one reason, they don't want anything - if there is a book to be written - they don't want anything to give Herbie a shot at a new trial - or an appeal.

D That's exactly the reason I'd like to sit down with Jim L_____. Ask him to get in touch with me.

C Are you frightened?

D If I'm on the streets and I think I see somebody I know - somebody like - a few weeks ago I was taking a bus to my methadone

clinic and I looked across the street at the drugstore and I thought for sure I saw Ben Marlo, who I know is out on bail waiting for an appeal. Like I was told, Benny's not going to-come looking for me - but if he saw he, he'd probably put the finger on me if not kill me himself.

The agents have also told me - Herbie may not be looking for you - he may not go out of his way. I'm afraid more for my son being in NY - I think it's very stupid. He's using the name M_____, but he lived I'd say 30 miles from where he used to live. I'm sure if I know the boys he's going to his old hockey ring. If they did want to get him, it would be very easy for them because Herbie's kids still live in that house and everything. I was told when I first went into custody and I first was going to testify that for one thing Herbie's house was going right away - that she would be back on Spring St. in two weeks because first of all IRS was going to take the house and they'd neverbe able to keep up the payments and pay off all this also. But I knew like when they told me that it was bullshit, because I know Herbie's got a large amount of money tucked away - he always has. Some is put in the mother's name, the boy's name and he's got some in his safe in his house. So his house going, I never believed that. And I didn't care if his house was taken away - I kind of wanted it, because I kind of felt they made me lose everything, but I didn't want to hurt Josephine - I didn't want to hurt the boys that much.

118A

D Do you think it's possible you can walk down the street one day and somebody's gonna take a gun...?

C No, I think if they do ~~x~~ kill me I ~~xxxxxxx~~ think they'll grab me and do it kind of silent - like I said an overdose will be what they'll do.

D Do you think about it at all?

C Yeah, a lot.

D Are you scared?

C Not of overdosing.

D Are you scared of being killed?

C Yes. The government is a joke. They are the biggest bunch of liars - one guy will tell you one thing and then he'll come back - but he didn't have the authority - that's what they'll hand you.

D Would you advise anybody else in your situation to do...

C No, Iwould tell them first I think the first thing I would tell anybody who's going to testify, they ~~x~~ should get their own lawyer first - have them represent them. And have everything that the government tells you they are going to do for you in writing. My jewelry, my i.d., my children's school records, which I just got - my clothing - everything that I've lost, plus the money and the hiding has - I mean my life ~~x~~ was ruined before, but boy this really put the screws to it.

D You don't really seem to be taking the precautions I thought you might take - I mean, you're living under your real name, for example.

C Well, I don't really live anyplace. You know what I mean?

p. 96

C The first permanent address since I've been down here is at Gary's.

D Even the fact that Mark is in NY, you don't seem to be hiding.

C I'm not in touch with Mark.

D At all?

C He's never written me a letter - the last time I spoke to Mark - last April? May? Six months ago - and he's never written. I spoke to him one time on the phone and asked him to come back - this was when Ceily overdosed a few months ago and he told me, whadya crazy? So I can watch you cut yourself up again? There's one part I didn't tell you about in Baton Rouge there.

D At one point when I was living in the Elms I was working, and I wasn't getting any sleep, Iwas working two jobs, and trying to support Dawn's apt., and help Cheryl and Clyde, they'd just been married, nobody ever gave them a dime, ya know - no wedding gifts or anything , and the kids were struggling working. I'm trying to support my own family, I tried to commit suicide - cut my arms up bad..with a razor blade - and I wound up in the psychiatric hospital just before the Ben Marlo trial, because that was brought up on the stand andthey had to have a doctors certificate saying I was mentally sane -

C Who found you?

Girl: What happened was mom was really uptight - I didn't know what to think so all of us figured she was okay. We didn't even think about it, so we all went out and left her and she was in her bed all alone- she seemed really lonely. The next thing

I hear is screaming and commotion in all the apartments, because we knew everybody, and I ran upstairs and I saw my mother laid out like this on the bed and her arms were tied up in towels and everything. I screamed and I went to look in the bathroom and a razor blade was just sitting in the sink and blood spattered all over - I almost threw up, I just ran out of the house.

C Dawn found me and ~~she~~ - Dawn and Mark don't take things like when it comes to me - Oh, mom, and start crying. They get very angry with me and damn you, what are you doing ~~this~~ this for - Dawn and Mark and Cheryl hate that I live in the past and they're always telling me to get out of my ~~this~~ bubble and daddy's dead and you have to - maw, find somebody else, please - they're always begging and they feel kind of bad once in a while that they didn't let me marry John because they felt like I really loved him and maybe I could've had a happy life by now - forgotten about Louie, but I just never have seemed to be able to. I keep looking for somebody like him - I don't want to marry a 9 to 5er - I don't think I could live with that, somebody who'd ~~have~~ have a set salary every week - I just don't think I'd be happy living that way. I want to be able to give my children the things that their father -

D What do you think's going to happen to you because of the book?

C Because of the book, I hope it's gonna give me enough money to put my children in the schools I want them to go to - give my daughter - the two babies the education I wanted for Dawn

p.98

and Cheryl. Give them just a normal life again - like their teeth fixed, etc.

D It's sort of dangerous for yourself -

C Danger - I don't think it's going to do anything. First of all you're not going to say I'm living in Florida - I'm sure that Herbie doesn't think that I'm using Moletto or anybody else.

D Are you going to changethat name as soon as you get identification?

C If I ever get the proper i.d. - I'll tell you the reason I havent pushed as much as I should've on my i.d. is I never really wanted to change my husband's name, no matter what the consequences. I never have really planned on getting married again and I just -

D You mean that's your memorial to Louie?

C Right.

D It almost seems like you're looking to be found by using your name as freely as you do.

C Sometimes I've thought of that myself. The only thing I can say about that is I hope they don't find me before I get my kids set. I'm not happy living, truthfully. I haven't been for three years. I've used more drugs in these past 3 years since his death than I ever used in the four years in the streets. I don't just mean heroine, I became a garbage head, if you know what that means. I use everyting and anything, and to hell with the consequences.

D Still?

C No, today aside from I guess about two weeks I had gotten into barbituates where I was using a few every other day or something. I was using a little heroineoccasionally. I'm not in the position and I really dont go on the streets ~~xx~~ and buy drugs any more. I don't havethe money to and unless I'm turned on, which doesn't happen too often, and of course I'm always need a new drug. I never used _____ before I came down here, which is a very popular drug.

D When you think of Louie, do you care if you get killed once your kids are settled?

C No. Except for what I think it would do to them, I really don't care. I'd hate to see them left ~~xx~~ alone, but unless I can do for them and just be the right kind of a mother that I want to be for them, I'd rather not be one at all. And being the right kind of mother for me, I have to ~~xxxxxx~~ have the proper tools. Not anything aside from the proper place for them to live and not having to want and need shoesand clothes and dental and eyeglasses and all the things that they would have if their father was alive.

D Are you in contact with anybody - with your mother?

C My mother knows I'm in this state.

D How about - do you have any idea where Joey is?

C I assume he's out west.

D How about some of the other people?

C The other witnesses? Ceil Sperling lives with Josephine and is torturing her right today - I'm sure ~~x~~ that the poor girl hasn't

missed a visit and she's trying to raise her children for her and you know she's the typcial little Jewish grandma.

D You never get any feedback on anything?

C Oh, yeah, I always do - every time I call NY, I ask how's Joey, what's Joey doing ,and I'll get - well, Joey's releasdd now and he's working and things seem to be going fine. How's Deedee? Deedee had a roughx time of it once she was released - the whole family moved in with her, they thought the government gave her a large sum of money and the girl really ya know got screwdd by her family. They all started living off her and she's working and things are really tough for her right now.

D But you never hear any threats or anything?

C Threats? No. My family used to get an awful lot of phone calls. My mother up until she came back down to her home in Florida was getting calls like - asking for Louie. She always got these weird calls - I did time with Louie and he gave me this number so when I got out of jail - and my mother said, well, Louie was killed 3 years ago. Oh my god, No - Threats?

Girl: What about that scare we had with the man?

C Oh, he heard about that man. No, I've never gotten any actual - aside from that kid, ya know - that kid also held a gun on Mark and I in our apt. and more or less told us the same thing - we were going to get blown away.

D Now, the advice they gave you was - stay out of places?

124A

C Yeah, places they were apt to go - like dog track, baseball, football games -

D Concerts - <-(a little attempt at humor here)

C Yeah, things like that.

D I mean, are you a bit paranoid?

C Yeah, I get very paranoid at times where I start locking doors, pulling down shades - I picked Ceil up one time at the airport when she came to Baton Rouge back from my mother's in Florida. She gets off the plane ~~xxx~~ and says to me, Mom, that guy's got a picture of you in his hand. And she said, - and he followed us for a while and we were all quite scared.

D And that was it? He just disappeared?

(Girl's voice) - that guy, mom, had a picture of you in his hand and was looking at you and looking at the pictnre while ~~xxxxx~~ we were in the parking lot.

C The kids I think - Ceily and the older one - Blythe isn't like a ten-year-old - is she ten or eleven?

Girl: Ten.

C She's like a six-year-old - even at school the teachers used to tell Louie and me, she's one of the most well adjusted children that they've ever met. She's also one of the most immature. She still thinks she's in kindergarten, and they said, Mrs. M_____, she's in third grade, ya know. She has to stop bringing all these toys to school. She had the toy chest in on her desk practically.

D How about in terms of drugs? Dawn and Chery are still using drugs pretty heavily.

C They're still using T_____. I'm sure Mark is still smoking

125A

his pot because I know Al smokes pot now and his wife - but aside from that I don't think that Mark is using any other drugs. If he can get away with it,

D Did you ever think in terms of the whole thing - in terms of your life - what the children are like - do you ever think - just sit down and think about that? I mean, knowing all that's come down, would you do it again.

C Testify?

D No, what I meant was - knowing all this, if all of a sudden another Louie came along, would you help him again?

C Definitely - absolutely. No second thought in my mind. Even that I've turned out three or four potential addicts, I would definitely marry Louie in a minute again. He was worth evry minute of it - and first of all, if Louie had been alive, my children would never be using drugs.

D I was asking you - would youdo it again for Louie?

C And I was telling you yes - definitely. If Louiewas alive, first of all, none of my children would use drugs - I'm sure of that. Louie had enough control. The only reason they started was they had me to follow and I continued using and there was no discipline in my house once he was gone.

D You were really in love with him?

C I'm still in love with him, I'll never forget him. I'll never forget those maybe 3 years out of his whole life we really spent together and I hope someday I do meet somebody - they have to be almost just like him. I don't think I will ever really marry again, although I'd like to. I'd like to just for the - to have

a nice home again.

D What are the feelings that go on in your head on a day to day basis?

C On a day to day basis, every day I'm trying to ~~kkmk~~ think of another way to get enough money together to get us all settled and I would like to bring my son-in-law and daughter and all of them back with me and have them all together, because I've been unhappy for the past 3 years, but I'm really unhappy without all my kids with me - just lost. Ceily will~~k~~ ~~ax~~ say to me, we're just about making it with the two of us, if they all come back you'll wind up supporting them and all and we can't afford it, but I'd love to have them all with me.

D Did Louie ever cut anything in front of any of you - did you ever see him working with drugs - did any of the kids?

C No. Never really - aside from seeing him put it in the bag or pick up the bag and take it to somebody, or lop a bag, I never ~~a~~ saw Louie with anything aside from money.

D When you were with the federal marshals at Birchwood Lake, were you ~~ff~~ frightened?

C Yes, very -

D All the time?

C All the time. I was afraid ~~a~~ a lot up there - I was so cooped up and the kids had nothing to do - absolutely nothing - and always somebody there trying to tellus what to do, or what we couldn't do - even if we went for a walk, we were followed by 2 agents.

(Girl's voice) I used to always be embarrassed, because we'd go into stores and there would alwyys be that black man - ~~axfaxxaxkadx~~

C We had a few black agents.

D Neil, if I think of any more questions, I'll put them in a letter and you just answer them on a tape. And if you think of any stories you haven't told, or antyhing like that, just put em on the tapes and

C I was just saying, I hope this book hits the streets before my mother dies, because she's really very sick.

D It'll be next fall at the earliest, I'm afraid.

C [redacted] There's not going to be any magazines?

D I said I would be very surprised if there wasn't.

C Cosmopolitan? Better Homes and Drugs? Yor Local Pharmacist would like to interview their best customer.

Mans voice, very low - can't discern what he's saying - something about a story - negotiations before the book is ready to hit the street, - normal conditions they start now -

D If there were any one story about Louie you feel sums him up - Neil The one about the Cubans in the boat.

C No, - the thing I think sums Louie up is his game of pick up sticks or - at one time when we were in Bear Mountain, he played Dawn Frustration and Dawn won $800 and he gave her $800.

D Did he ever ~~gake~~ take it back? A card game?

C ~~XXXXXXXXXXXX~~ No, Frustration is a with the ball - a metal ball - and Dawn used to have it so it would jump the ~~xxxxxx~~ board, she was so skilled at it, and she won $800 from her~~x~~ father and he gave her $800.

p. 105

Girl's voice - And once you won a trip to California.

C When she went with her father to California, she won that and $200 cash.

D Did he let her win?

C She really won. He'd tease her with , you've had a lot of time to plan this, I just got outa jail -

D Did he ever play thatkind of stuff with any of the otherkids?

C We all stuck to Frustration. The real name is Gravitation.

D Remember to have Jim Lavin call me also.

C Don't forget who he is when he calls.

D No, he just tells me he's with the bureau of narcotics

C He'll probably call and say this is Jim L., U.S. attorney.

D One day I'd like to sit down with him and have lunch and let him tell me his feelings about -

C What kind of a character are you goingto write me up as?

D It's gonna be your words pretty much - all I'll do is - your words - ain't got no money -

D Did you used to fight a lot with him?

C The only quarrel we ever had was my drugs and if he didn't feel - if he felt I was doing something in front of the children that he didn't like - and that was drugs - Did you think daddy and I fought a lot? We fought over the pregnancy, that was all.

Girl: When we came back from _____ communion, you were undressing Blythe and daddy stomped on your toe. He said you stupid bitch or something -

129A

C He didn't want me to come to the communion.

D Why?

C Because I guess he was gonna bring his girlfriend and I showed up. I was pregnant and ~~he~~x we were arguing about I don't know what and he just told me that I was not to go to the boys communion. He didn't feel like going out and buying the kids all new outfits and he thought they needed them to go to this and he didn't want me to wear whatever I was wearing and he just had a new suit made and he just told me not to go - it was ~~going to~~ just going to be everybody's wives and all the guys and there wasn't going to be anything exciting, and Josephine insisted that I come, so we wound up taking a Long Island railroad in and a cab - Josephine paid for the cab fare, I remember that, and that really infuriated Louie.

D And Louie was there by himself?

C Right - he was standing there at the bar with all the guys and that was it - he drove me home and we had a big argument.

AFFIDAVIT OF ASSISTANT UNITED STATES ATTORNEY JANE W. PARVER IN OPPOSITION TO 2255 MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
BENJAMIN MALLAH,

Petitioner,

-against- 76 Civ. 3298 (M.J.P.)

UNITED STATES OF AMERICA,

Respondent.
----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

JANE W. PARVER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, attorney for the respondent herein, and as such I am in charge of the above-captioned action. This affidavit is submitted in opposition to petitioner's motion pursuant to 28 U.S.C. §2255 to set aside his 1974 conviction in Indictment S 73 Cr. 881.

2. Indictment S 73 Cr. 881 charged petitioner, along with others, with one count of conspiracy to distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances in violation of 21 U.S.C. §§ 821, 841(a)(1) and 841(b)(1)(A), and further charged petitioner, along with Vincent Pacelli, with three counts

of distribution of various Schedule I and II narcotic drug controlled substances, agin in violation of 21 U.S.C. §§ 812, 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. §2. The three substantive counts were dismissed on petitioner's motion prior to trial. Petitioner Mallah was convicted on the conspiracy count after a twelve-day trial before this Court and on February 26, 1974, petitioner was sentenced to a prison term of ten years with a Special Parole Provision of three years, in addition to a fine of $25,000. The conviction was affirmed, United States v. Mallah, 503 F.2d 971 (2nd Cir., 1974) and a petition for certiorari was denied by the Supreme Court, 420 U.S. 995 (1975).

STATEMENT OF FACTS

3. The evidence at trial established that petitioner was engaged in a conspiracy to distribute large amounts of heroin and cocaine in New York. Mallah's role was to provide large sums of money for the purchase of narcotics and to share accordingly in the profits from its resale.

4. Some of the testimony detailing petitioner's role was that of Joseph Conforti, a named co-conspirator. Conforti testified that in July, 1971 Conforti went to Philadelphia with Louis Mileto* where the latter delivered

---

*Mileto worked for Herbert Sperling, and both were named as co-conspirators. Sperling had been previously tried and convicted on July 12, 1973 for his role in the conspiracy.

a kilogram of heroin to Sperling's customers. After the delivery Mileto showed Conforti a box containing $60,000 (Tr. 650-652). When Conforti asked if the money was for Sperling, Mileto said, "No, its going to Bennie, one of his partners" (Tr. 653).

During the return trip to New York, Conforti asked Mileto who Bennie was. Mileto stated that "Bennie was Herbie's partner, his backup man for money problems if you needed money in the junk business, Bennie was there to give him money." And that "this money was to be delivered to Bennie" (Tr. 653). In New York Mileto picked up an additional $17,000, which was placed in the same shoe box and wrapped with the same paper. Mileto and Conforti then drove to Spring Street where Conforti remained in the car while Mileto went into Sperling's building. Some 15 or 20 minutes later Conforti saw Mallah exit the building carrying the box of money which he recognized because of paper with which it was wrapped. When Mileto returned to the car, Conforti asked him "who is that guy carrying the money." Mileto told Conforti that "it was Ben Mallah."

In February, 1972 Conforti was present at 5 Spring Street when Mallah and Sperling were in the bedroom talking to Louis Mileto following the latter's arrest. Conforti overheard Sperling berating Mileto in Mallah's presence for having extra packages of heroin which Sperling had discovered when Conforti, the day before, delivered the heroin stored by Mileto in Zelma Vance's apartment. Conforti also heard

Sperling (who apparently concluded that Mileto had been stealing some of his heroin and selling it on his own) at that time tell Mallah, "I told you so," to which Mallah replied, "What could you do?" (Tr. 699-700).

5. Patrolman Gerald Lino testified concerning a conversation between Sperling and Mallah that he overheard on August 16, 1972 while secreted in a car parked in front of the barbershop at 844 Seventh Avenue:

> Sperling: "I got to have the stuff."
>
> Mallah: "Don't worry about it."
>
> Sperling: "Fifty thou, right."
>
> Mallah: "Yes, right, fifty-fifty."
>
> Sperling: "But I got to have it. You know I need it."
>
> Mallah: "Don't worry about it. I'll see the people this afternoon, tonight or early tomorrow. You should have it" (Tr. 1182).
>
> Sperling: "But I need it."
>
> Mallah: "Don't worry about it. If the people were straight, if they are not on the run we should have it."

Patrolman Lino minutes later overheard co-conspirator Norman Goldstein ask Barney Barrett, "Are they going to get it?', to which Barrett replied that he didn't know. Goldstein then sent Barrett back into the bar, which Sperling and Mallah had entered, to find out. Barrett came out shortly and told Goldstein, "Yes, we should have it tomorrow" (Tr. 1180-1185). Photographs taken at the time of these conversations show Mallah and Sperling standing next to the car in

which Patrolman Lino was hidden and also show Barrett and Goldstein close by (Tr. 1135-1136, 1189, GX 61B, 61C, 61D). Patrolman Lino also testified that the word "stuff" in the Mallah-Sperling conversation referred to a quantity of narcotics (Tr. 1188-1189).

6. Barry Lipsky, a co-conspirator, testified that during one of their trips to Ballantine's barbershop in the summer of 1971 to obtain narcotics Lipsky asked defendant Pacelli to identify the people standing in front of the barbershop with Sperling. Pacelli then told Lipsky that one of the persons was "Louis" and that "Louis works for Herby" (Tr. 95). Lipsky then asked Pacelli "who's that other guy, with the bald head and the suntan and yello sunglasses?" Pacelli then told Lipsky "That's Benny Mallah, Herby's junk partner" (Tr. 95-96).

7. After Mallah's direct examination, where he denied knowing Pacelli, Lipsky testified that he had seen Mallah with Pacelli on at least four occasions in the summer and fall of 1971 (Tr. 87, 94-96, 134, 148-149).

7. Cecile Mileto, widow of co-conspirator Mileto, testified that she had once seen Mallah and Sperling standing next to a table on which were piled several packages of white powder. As the packages were placed in a shopping bag, Mallah asked Sperling whether he would have enough money for them. (Tr. 204-04).

8. Petitioner's defense was that he was a bookmaker

and had dealt with Sperling in that capacity. He denied knowing Joseph Conforti, Louis Mileto and Cecile Mileto and denied having the conversation with Sperling which had been testified to by Patrolman Lino.

THE INSTANT MOTION

9. In the instant application petitioner proffers primarily two arguments, neither of which, the Government submits, is sufficient to warrant vacation of this conviction. The first is that Cecile Mileto perjured herself concerning her current drug use, that the Government knew her testimony was false, and that her credibility would have been seriously impaired had the truth been disclosed. Petitioner's second argument is that during the nine months prior to trial Mrs. Mileto engaged in several acts of gross misconduct which the Government deliberately failed to disclose to the defense as material for impeachment.

10. The sole basis for petitioner's claims of perjury and deliberate Government suppression are certain statements attributed to Cecile Mileto in a book entitled "Louie's Widow" ("book") on which Mrs. Mileto evidently collaborated with author Dave Fisher, as well as transcripts of certain interviews by Fisher with her ("interview tr."). * It should

*A complete copy of the relevant interview transcript pages is annexed as Exhibit A.

be noted at the outset that not only was this book first published in 1974, and thus some time after the events in question, but, the Government submits, was obviously intended to be commercially successful.* Moreover, Mrs. Mileto was not under oath while preparing the book.

11. In any event, the Government submits that petitioner's motion should be rejected on any number of grounds:

a) Petitioner has cited no statement of Mrs. Mileto, whether in "Louie's Widow" or in the interview transcripts, and the Government can find none, attributing any knowledge to the Government of Mrs. Mileto's alleged activities. Thus, the Government submits, there is no basis for petitioner's claims that the Government knew of Mrs. Mileto's alleged perjury and/or knew of other gross acts of misconduct and failed to disclose them.

b) The Government submits that a review of the book, the interview transcripts and the Mileto trial testimoney fails to yield any substance to the claim that the witness perjured herself with respect to her drug use.

c) Even assuming a true conflict between the post-trial statements and the trial testimony of the witness, the conflict is not of sufficient magnitude to warrant the reversal

---

*On pages 97-98 of the interview transcript, Mrs. Mileto indicates that she is hoping to receive a substantial income from the book.

of petitioner's conviction, where the acts complained of go solely to the crediblity of a witness with respect to whom numerous acts of misconduct had already been disclosed and where there is sufficient evidence independent of witness' testimony to sustain petitioner's conviction.

THE CLAIM THAT THE GOVERNMENT KNEW OF CECILE MILETO'S ALLEGED PERJURY AND/OR DELIBERATELY SUPPRESSED OTHER ACT OF MISCONDUCT.

12. Petitioner concedes that "there is no allegation that the Government attorneys knew of Mrs. Mileto's continued involvement with drugs" (Petitioner's memorandum of law, p.2) but contends that the Government must be charged with the knowledge of its agents. Petitioner's argument is overly broad in so far as it seeks to impute knowledge of any federal employee, such as the U.S. marshals, to the Government. Instead, it has long been established that at best the prosecution can be charged with knowledge only when the agents themselves must be regarded as an arm of the prosecutor, i.e., when they have actively participated in the investigation, including supervising the witness in question, and have otherwise indicated an intimate involvement in the prosecution.* United States v. Morell, 524 F.2d 550 (2nd Cir., 1975).

*Thus petitioner's arguments concerning the alleged knowledge or activities of any of the U.S. marshals, Shargel Affidavit, p.11, is irrelevant.

See, also, United States v. Quinn, 445 F.2d 940 (2nd Cir.) cert. denied, 404 U.S. 850 (1971). And with respect to these agents, the Government submits that petitioner's argument must fail since there is no evidence - whether in "Louie's Widow" or the Mileto interview transcripts - that even hints that Cecile Mileto's alleged drug activities were known or could have been known to these agents.

13. Each and every one of the alleged drug activities relied upon by petitioner occurred, according to Mrs. Mileo, in Louisiana, not New York.* Again, however, according to Mrs. Mileto, the only instances where she met with federal narcotics agents were, with one exception, outside Louisiana, i.e., primarily in New York while preparing for the grand jury or the Sperling or Mallah trials. (Interview Tr. 8, 21, 24, 26, 27, 30-31, 38-39, 43, 47, 58, 66, 69, 88).

---

* The locale is deemed Georgia in "Louie's Widow". It should be noted that two of such incidents relied upon by petitioner occurred, according to Mrs. Mileto's statements, after the Mallah trial. For example, petitioner points to the assertion that Mrs. Mileto's son used his fees for testifying at petitioner's trial to finance marijuana purchases (Shargel Affidavit, ¶ 20); Interview Tr. 68). Since the incident, if it occurred at all, could only have taken place after the boy testified and after Mallah's trial, petitioner's argument that the Government knowingly suppressed knowledge of this act in advance of trial is not supportable. Similarly, petitioner points to statements in the interview transcript (Shargel Affidavit, ¶ 22); Interview Tr. 86-87) that Mrs. Mileto arranged to use DEA money to pay for certain pills obtained from druggists. Again, it is clear from the interview transcript, however, (pp. 85-88) that the incident only occurred after petitioner's trial.

The one exception, which was soon after Mrs. Mileto entered the witness protection program, was when Agent Stuart Stromfled and Gerald Lino came to Baton Rouge for the week.* And, with respect to this one week, Mrs. Mileto unequivocally states that these agents had no knowledge of any of her drug activities:

> "And I go home - Jerry Lino and Stui are there - my favorite agents and they are now coming down - the bust and trial are very close - to make sure I don't get into any more trouble and in fact move my children and I out of this hick town closer to New York because now I'm going to have to come in every single day for briefing. So we stay there about - they stayed about a week, fighting with U.S. Marshals. . . So we fooled around, swimming and everything, really having fun. . .so the agents were real fun - they'd drink with me, everythin, and I had started boozing it up - there were no drugs around. I drank wine or beer." (Interview Tr. 40-41). (Emphasis added).

Similarly, Mrs. Mileto does not say that she told Lino and/or Stromfeld any of the details of the circumstances allegedly surrounding the death of her daughter's boyfriend, but only notes that she called them after the deal and they came down. (Interview tr. 39).**

Thus, the Government submits that petitioner's claim that the government agents "well knew" that Mileto was involved

---

*Stromfeld and Lino are identified as Teddy Burke and Jack Bruns in "Louie's Widow". The accompanying Stromfeld Affidavit identifies this week as being May 8 - 14, 1973 - or more than seven months prior to petitioner's trial.

**In the books, however, Mrs. Mileto states that the two agents were coincidentally in the area at the time (p. 252).

in drugs, since it was the agents who came to Louisiana to straighten out her troubles (Shargel Affidavit ¶ 21), is both wholly unsubstantiated by the interview transcripts and book and is rejected by the affidavits of the agents themselves.

PETITIONER'S CLAIM THAT THE WITNESS PERJURED HERSELF CONCERNING HER CURRENT DRUG USE IS NOT SUBSTANTIATED.

14. During petitioner's trial, Cecile Mileto was questioned extensively concerning her past and present drug use, including her arrests in connection with narcotics. Her testimony, the Government submits, scarcely compelled the conclusion that petitioner now urges the jury necessarily drew, i.e., that of a person totally rehabilitated during the nine months she had been in protective custody. Thus she testified that:

a) While her usage of hard drugs (heroin and methadone) had ended in March 1973, she had been taking barbituates (sic) since she was in protective custody, i.e., March 1973 (Tr. 213);

b) She had taken pills the very morning of her testimony (Tr. 236);

c) She was unable to say how many barbituates (sic) she had taken since beginning her cooperation with the Government (Tr. 213).

d) She had been arrested for distribution of barbituates (sic) during the time she was under federal protec-

tion (Tr. 223-224), and

e) She had also been in possession of a hypodermic needle during this same period)Tr. 214).

Indeed, the witness specifically refused to say that she had no drug problem, answering only that, as noted above, she had cured her addiction:

> "Q In other words, as you sit there now you are completely cured of all these drug problems that you have had?
>
> A I have no habit (Tr. 236) (Emphasis added).

The incidents now relied upon by petitioner do not present a substantially dissimilar picture. Assuming arguendo the truth of the statements in the interview transcripts, Mrs. Mileto did use a variety of barbituates (sic) and other soft drugs, such as marijuana and evidently boiled mushrooms, but she was not using any hard drugs. In addition, she indicates that even this usage, which was only in Louisiana, was sporadic and primarily confined to April and May, 1973, the first two months that she was in the witness protection program. Thus, not only did she not use drugs while Agents Stromfeld and Lino were in Baton Rouge, but Mrs. Mileto also states that during the period between the Sperling and Mallah trials (June 1973 - December 1973) she was "working two jobs" and was not using any tpes of drugs (Interview tr. 76, 84).

15. Lastly, the Government submits that in any event there is no conflict between Mileto's trial testimony

and the interview transcripts since both the questions of petitioner's counsel and the testimony of the witness were specifically directed to the present time:

"Q Are there any narcotic drugs with you right now?

"A No, there are not.

Q Are there any where you are living?

A No, there are not.

Q I assume that now you have no interest in taking narcotics of any kind?

A I take pills for my nerves, which I am under doctor's care for.

Q Other than that?

A None" (Tr. 236) (Emphasis added).

It is undisputed that one month prior to this testimony Mrs. Mileto had been hospitalized following her attempted suicide and was under a doctor's care. (Interview Tr. 96). In addition, Mrs. Mileto was living in strict protective custody in New York immediately prior to and during petitioner's trial (book, pp. 297-298; Interview tr., 227). And, as noted previously, most of Mileto's drug usage appears to have taken place in April and May 1973, seven moths prior to petitioner's trial. Thus, the Government submits that there is no basis for petitioner's claim that Mileto perjured herself at trial when she testified concerning her current drug usage.

EVIDENCE OF MILETO'S ACTIVITIES WOULD MERELY BE CUMULATIVE EVIDENCE BY WAY OF IMPEACHMENT.

16. Assuming arguendo that Mileto did engaged in the drug usage and other acts now attributable to her, the Government submits that petitioner suffered no prejudice from nondisclosure. Such evidence was relevant, if at all, solely to the crediblity of a witness who herself admitted to far more serious crimes and other acts, rather than the guilt or innocence of petitioner. Moreover the petitioner's conviction did not result solely from Mileto's testimony.

17. As this Court is aware, the great part of Mileto's testimony was concerned with impeachment. The witness thus testified inter alia that:

a. She was convicted in 1970 of petty larceny, which charge had been reduced from armed robbery;

b. She was convicted in 1972 of possession of drugs and was sentenced to 30 days;

c. She pled guilty in 1972 to another charge of drug possession;

d. She was arrested in 1972 for shop lifting;

e. She was arrested in 1973 for forging prescriptions;

f. She was arrested in 1972 for distribution of drugs;

g. She was a heroin addict from 1969 - 1973 and used every type of drug during that period;

h. She had been using barbituates (sic) since

March 1973 to the present;

i. She had been in possession of a hypodermic needle from March 1973 until the present; and

j. She had recently tried to kill herself.

The Government submits that in light of the serious nature of the crimes and other acts of misconduct admittedly engaged in by the witness, further evidence that Mileto's son went target-shooting with agents, or that she went swimming semi-nude, or that she carried an agent's gun in her handbag at dinner, or even that she stole a bottle of barbituates (sic) or smoked pot or boiled mushrooms would not have impaired her credibility to any further or significant extent.

18. Lastly, the undisclosed acts go solely to Mileto's crediblity, rather than petitioner's guilt or innocence. Moreover, in light of the substantial evidence, apart from Mileto's testimony, linking petitioner to the conspiracy (¶¶ 4-6 above), the Government submits that the instant case does not fall within the special exception created by United States v. Seijo, 514 F.2d 1357 (2nd Cir., 1975) (nondisclosure of impeachment material, although normally considered cumulative, was sufficient to overturn conviction where the credibility of the particular witness was the decisive factor in conviction).

WHEREFORE, it is respectfully submitted that for

the reasons stated above, petitioner's motion should be denied in all respects.

/s/ Jane W. Parver
JANE W. PARVER
Assistant United States Attorney

Sworn to before me this
24th day of September, 1976

/s/ Maria A. Morales

MARIA A. MORALES
NOTARY PUBLIC, State of New York
No. 31-4521851
Qualified in New York County
Term Expires March 30, 1978

AFFIDAVIT OF AGENT STUART STROMFELD
IN OPPOSITION TO 2255 MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
BENJAMIN MALLAH,

Petitioner,

v.

AFFIDAVIT

76 Civ. 3298 (M.J.P.)

UNITED STATES OF AMERICA,

Respondent.
----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

STUART STROMFELD, being duly sworn, deposes and says:

1. I am a Special Agent with the Justice Department, Drug Enforcement Administration, Melville, New York. I participated in the investigation of the Government's case against petitioner Mallah and am familiar with the facts and prior proceedings herein. I have also read a draft of "Louie's Widow" by author Dave Fisher with Cecile Mileto.

2. I first met Cecile Mileto in New York in March 1973 when I spent part of one day interviewing her. The next day Mrs. Mileto and her children were flown to Louisiana in connection with the Government's witness protection service. During the entire time that Mrs. Mileto was in Louisiana she was under the protection of the United States Marshal Service.

It is my understanding, however, that the marshals did not live with, or near, the Mileto family.

3. Other than through some infrequent telephone calls, no agent participating in the investigation of the Government's case against petitioner Mallah spoke with Mrs. Mileto, other than on the one day in March 1973, until May 8, 1973, when Patrolman Gerald Lino* and I travelled to Baton Rouge, Louisiana. Our visit was prompted by telephone calls we had received from Mrs. Mileto and her children who were complaining that they were not receiving sufficient funding from the marshals.

4. When we arrived in Baton Rouge, we learned that Mrs. Mileto had been arrested for distribution of 2 seconals. I then spoke with Mrs. Mileto who told me that her daughter's boyfriend had died from a drug overdose and that her arrest for distribution had resulted from a request from the boyfriend's sister. According to Mrs. Mileto, after the boy's death the sister had brought a cousin over to Mrs. Mileto, told her that the cousin was very upset over the death, and asked Mrs. Mileto for some pills to relax the cousin. Mrs. Mileto told me she refused to accept any payment for the 2 seconals but was arrested for distribution anyway.

I specifically asked Mrs. Mileto whether she had

---

*Gerald Lino is a New York City police officer attached to the 6th Precinct, who also participated in the investigation of the Government's case against petitioner Mallah.

anything to do with the boyfriend's overdose. She told me that she did not, and that she had neither sold nor given him any drugs. Mrs. Mileto also stated that she was not selling or dealing in any drugs. I further investigated both the death and the arrest for distribution by interviewing Mrs. Mileto's daughter and the local police. None of these interviews gave me any reason to believe that Mrs. Mileto was dealing in drugs and/or that she was in any way involved in the fatal overdose.

5. Patrolman Lino and I stayed in Baton Rouge for the week, during which time we spent most of the days with the Mileto family. At no time did I see Mrs. Mileto use any drugs. Mrs. Mileto herself states that she took no drugs at all during the week that Patrolman Lineo and I spent in Baton Rouge ("Louie's Widow", p.257; interview transcript, p.41, tape 10, side 1). On May 14, 1973 the Mileto family was placed in 24 hour protective custody by United States Marshals.

6. I saw Mrs. Mileto subsequently on infrequent occasions during preparation for two different trials.* During these visits Mrs. Mileto was always in custody of the United States Marshals and with the exception of one instance, when I drove her to the airport, I always spoke with Mrs.

---

*United States v. Herbert Sperling, et al., Indictment 73 Cr. 441, which trial commenced on June 15, 1973; and United States v. Benjamin Mallah, et al., Indictment 73 Cr. 881, which trial began on December 19th, 1973.

Mileto in the federal courthouse and/or the offices of the Assistant United States Attorneys. At no time did Mrs. Mileto use any drugs in my presence nor did she ever indicate to me that she was using drugs at this time.

7. Shortly before the trial of petitioner Mallah, I received a phone call from Mrs. Mileto's children, indicating that she had tried to commit suicide. I therefore went to Louisiana on November 26, 1973 and visited Mrs. Mileto in the hospital. During her stay in the hospital she appeared to be under medication but did not otherwise indicate to me that she was or had been using drugs.

8. I have reviewed the Mallah petition, in particular, the allegations of acts of gross misconduct which the Government is alleged to have suppressed. With respect to these acts:

(a) During the week in May 1973 that Patrolman Lino and I were in Baton Rouge, we did go swimming with members of the Mileto family. As Mrs. Mileto states (interview transcript, p.24), the swimming pool was part of the garden apartment complex where the Miletos lived; there were always several people in the pool at any one time and neither I nor Patrolman Lino either saw or engaged in nude or semi-nude swimming.

(b) During the same week, Patrolman Lino and myself frequently took the Mileto family out to local restaurants for dinner. I never gave my gun to Mrs. Mileto to hold for

me on these or any other occasions and Patrolman Lino did not bring a gun with him to Louisiana.

(c) The rifle-shooting incident referred to is nothing more than the fact that one evening at dusk, Patrolman Lino, myself and Mrs. Mileto's fourteen-year old son were target-shooting, in a little park near the Mileto apartment, with the toy air-pellet gun that her son owned.

9. While I have read the descriptions of drug use and other drug-related activities which are contained in "Louie's Widow" and in the interview transcripts, I had and have no knowledge of such activities nor, as far as I know, did any other agent participating in the investigation of the Government's case against petitioner Mallah.

/s/ Stuart Stromfeld
STUART STROMFELD

Sworn to before me this
17th day of September, 1976.

/s/ Jane W. Parver

JANE W. PARVER
Notary Public, State of New York
No. 31-4528888
Qualified in New York County
Commission Expires March 30, 1978

AFFIDAVIT OF PATROLMAN GERALD LINO
IN OPPOSITION TO 2255 MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
BENJAMIN MALLAH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.
----------X

AFFIDAVIT

76 Civ. 3298 (M. J. P.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

GERALD LINO, being duly sworn, deposes and says:

1. I am a Police Officer with the New York City Police Department, Sixth Precinct, 233 West 10th Street. In 1973, I was assigned to the Third District Narcotics Office and in that capacity I participated in the investigation of the Government's case against petitioner Mallah. I am familiar with the facts and prior proceedings herein, and have read the Affidavit of Gerald L. Shargel.

2. I first met Cecile Mileto in New York in March 1973 when I spent part of one evening interviewing her. I did not see her again until sometime in May, 1973, when I flew to Louisiana with Agent Stuart Stromfeld. In the interim I did receive some telephone calls from Mrs. Mileto in which she complained about the inadequate service she was receiving

from the U.S. Marshals, including her lack of funds. During those calls I asked her if she was keeping herself straight and off dope and she constantly told me she was not on dope.

3. When Agent Stuart Stromfeld and I arrived in Louisiana we learned that Mrs. Mileto had been arrested for distribution of two barbituates (sic). I spoke with Mrs. Mileto who told me that her daughter's boyfriend had died from a drug overdose and that her arrest for distribution had resulted from a request from the boyfriend's sister. According to Mrs. Mileto, after the boy's death the sister had brought a cousin over to Mrs. Mileto, told her that the cousin was very upset over the death, and asked Mrs. Mileto for some pills to relax the cousin. Mrs. Mileto told me she refused to accept payment for the 2 seconals but was arrested for distribution anyway.

I specifically asked Mrs. Mileto whether she had anything to do with the boyfriend's overdose. She told me that she did not, and that she had neither sold nor given him any drugs. Mrs. Mileto also stated that she was not selling or dealing in any drugs. I therefore had no reason to believe that she was dealing with drugs and/or that she was in any way involved in the fatal overdose.

4. Agent Stromfeld and I stayed in Baton Rouge for the week, during which time we spent most of the days with the Mileto family. At no time during this week did I see

Mrs. Mileto use any drugs nor did she appear to be under the influence of any drugs. At the end of the week Agent Stromfeld and I returned to New York.

5. I saw Mrs. Mileto subsequently on infrequent occasions during preparation for two different trials.* I always spoke with Mrs. Mileto in the federal courthouse and/or the offices of the Assistant United States Attorneys. At no time did Mrs. Mileto use any drugs in my presence nor did she ever indicate to me that she was using drugs at this time.

6. I have reviewed the Mallah petition, in particular, the allegations of acts of gross misconduct which the Government is alleged to have suppressed. With respect to these acts:

(a) During the week in May 1973 that Agent Stromfeld and I were in Baton Rouge, we did go swimming occasionally with members of the Mileto family. There were always several people in the pool at any one time and neither I nor Agent Stromfeld either saw or engaged in nude or semi-nude swimming.

(b) During the week in May 1973 that Agent Stromfeld and I were in Baton Rouge, we frequently took the Mileto family out to local restaurants for dinner. I did not bring a gun with me to Louisiana. The only other time I can recall being

---

*United States v. Herbert Sperling, et al., Indictment 73 Cr. 441, which trial commenced on June 15, 1973; and United States v. Benjamin Mallah, et al., Indictment 573 Cr. 881, which trial began on December 19th, 1973.

with Mrs. Mileto at a restaurant was the first evening I met her, in March 1973, when we stopped at a restaurant in Queens on the way to LaGuardia Airport. I did not give Mrs. Mileto my gun to hold on this or any other occasion.

(c) The rifle-shooting incident referred to is nothing more than the fact that one evening at dusk, Agent Stromfeld, myself and Mrs. Mileto's fourteen year old son were target shooting, in a little park near the Mileto apartment, with the toy air-pellet gun that her son owned.

7. While I have read the descriptions of drug use and other drug-related activites which are set forth in the Shargel Affidavit, I had and have no knowledge of such activities, nor, as far as I know, did any other agent participating in the investigation of the Government's case against petitioner Mallah.

/s/ Gerald Lino
GERALD LINO

Sworn to before me this
24th day of September, 1976.

/s/ Jane Parver

JANE W. PARVER
Notary Public, State of New York
No. 31-4528888
Qualified in New York County
Commission Expires March 30, 1978

MEMORANDUM

BENJAMIN MALLAH v. UNITED STATES OF AMERICA
76 Civ. 3298 (MP)

Petitioner moves pursuant to 28 U.S.C. § 2255 to vacate the sentence imposed against him by this Court, on the alleged ground that the Government deliberately suppressed evidence favorable to him in violation of the due process clause, U.S. Const. amend. V. The petition is based solely on the accompanying affidavit of counsel and vague, conclusory assertions and speculations distilled from certain transcripts of interviews conducted by a writer preparing an intended popular book, published by Playboy Press in 1975, about the life of a Government witness in petitioner's trial. For the reasons that appear hereafter, the relief sought must be denied.

On January 7, 1974, petitioner was convicted by a jury of conspiring to distribute and to possess with intent to distribute narcotic drug controlled substances. On February 26, 1974, he was sentenced to a prison term of ten years with a Special Parole Provision of three years, in addition to a fine of $25,000. The conviction was affirmed, United States v. Mallah, 503 F.2d 971 (2nd Cir., 1974), and a petition for certiorari was denied, 420 U.S. 995 (1975). Petitioner is presently serving his prison sentence at the federal penitentiary in Lewisburg, Pennsylvania.

Petitioner's chief claim is that the Government knowingly allowed an important prosecution witness to give false testimony at his trial. Petitioner also alleges that the Government deliberately suppressed other evidence of gross misconduct by that witness.

The allegedly false testimony was given in the course of defense counsel's questioning of a prosecution witness as to her use of drugs. The witness testified that she had ended her use of hard drugs in March 1973, and that from that time until the trial in December 1973 she had injected no drugs into her veins. The witness further testified that there were no narcotic drugs with her "right now" or where she was then living; that she "now" had no interest in taking narcotics; and that she no longer had a drug habit.

A new trial is required if the prosecution intentionlly allows false evidence to go uncorrected and the false testimony could in any reasonable likelihood have affected the judgment of the jury. Napue v. Illinois, 360 U.S. 264 (1959). Petitioner, however, explicitly disavows any allegation that Government attorneys knew that false testimony was being given. Petitioner's argument is that an agent of the Justice Department's Drug Enforcement Administration and a New York City police officer who participated in the investigation of his case did have such knowledge and that their knowledge should be imputed to the

prosecution. Even assuming arguendo that the above officials meet the "arm of the prosecutor" test for imputing knowledge as stated in United States v. Morell, 524 F.2d 550 (2nd Cir., 1975); see, also Giglio v. United States, 405 U.S. 150 (1972), the instant motion and supporting affidavit show conclusively that petitioner is not entitled to relief or a hearing.

The affidavit is insufficient on its face to warrant relief for several reasons. First, the affidavit contains not a scintilla of evidence that the witness lied when she testified that "now," i.e. at the time of the trial, she had no narcotics with her or where she wasliving, and that "now" she had no interest in taking narcotics and no habit. The brief segment of the interview transcript devoted to the period of petitioner's trial makes no reference at all to the use of drugs during that time. A fortiori the transcripts contain no evidence that the Government knew about any such drug use and suppressed that knowledge.

Second, the affidavit furnishes no evidence to support an inference that the two investigative agents were aware that the witness had used hard drugs, or had injected drugs, between March 1973 and the trial. All of the references in the transcripts to hard drug use during the relevant period are to drug use in Louisiana. The Government agents visited the witness in Louisian only once, and the transcript explicitly states that "there were no drugs around" during that visit.

The agents did learn that the witness had been arrested for furnishing a Seconal sleeping pill to a presumably sleepless and exhausted acquaintance who had come into town for a funeral, but that evidence was disclosed to the defense. Nothing in the transcripts indicates that the agents had knowledge that witness' testimony in court was false.[1/]

The moving affidavit is insufficient to warrant relief, or a hearing, for an additional reason. It is the rule of this circuit that, "Mere generalities or hearsay statements will not normally entitle the applicant to a hearing. . ." Dalli v. United States, 491 F.2d 758, 760 (2nd Cir., 1974). The transcripts quoted in the affidavit in this case are hearsay which is almost devoid of probative value. They are unfocused, rambling, and difficult to follow. It is frequently difficult to determine the particular point in time to which specific passages of the transcripts relate. Manifestly, petitioner has not satisfied the requirement that he set forth specific facts which he is in a position to prove

---

1/ Of course, perjury by a prosecution witness or failure to turn over evidence favorable to the defense may in some circumstances be grounds for a new trial even in the absence of Government misconduct. However, petitioner has not argued that such circumstances exist in the present case. This court finds, in any event, that it is not probable, and indeed there is no significant chance, that the evidence in the transcripts could have affected the verdict. See, United States v. Stofsky, 527 F.2d 237 (2nd Cir., 1975), petition for cert. filed, 45 U.S.L.W. 3031 (U.S. April 26, 1976) (No. 75-1554); United States v. Seijo, 514 F.2d 1357 (2nd Cir., (1975).

by competent evidence. See Dalli, supra, at 761.

This court has also considered petitioner's claim that alleged evidence of gross misconduct by the prosecution witness was deliberately suppressed, and finds it to be without merit. Many of the allegations in the supporting affidavit relate not to misconduct by the witness, but rather to the entirely irrelevant behavior of federal marshals assigned to protect the witness. Other allegations relate to inconsequential incidents as "semi-nude swimming," or playing with an agent's gun. And as to the remaining alleged incidents, there is no indication in the transcripts that the Government had any knowledge.

Finally, petitioner has presented no basis from which this Court can conclude that the alleged evidence of gross misconduct and mendacity alllegedly knowingly suppressed by the Government could have been reasonably likely to affect the witness' credibility. The jury was told that for four years prior to March 1973 the witness had had "a bad habit", mainlined heroin, used "just about every drug," and supported herself by "illegal means." In addition, the witness testified that she continued to use barbiturates, and in fact had taken pills that very day. "As Mr. Justice Steward said in Machibroda v. United States, 368 U.S. 487, 495, 82 S.Ct. 510, 7 L.Ed.2d 473 (1962), '[t]he language of the statute [§ 2255] does not strip the district courts of all discreation to exercise their common sense.' " United States v. Franzese,

525 F.2d 27, 32 (2nd Cir., 1975).

Petitioner has not made out a sufficient claim of prosecutorial suppression of information relevant to the crediblity of a trial witness to warrant § 2255 relief. The motion and records show conclusively that petitioner is entitled to no relief; consequently, it is unneccessary to grant petitioner's request for a hearing.

Accordingly, the petition is in all respects denied.

SO ORDERED

October 19, 1976

U.S. District Judge

Original Signed
Milton Pollack

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

BENJAMIN MALLAH,

Petitioner,

-against- No. 76 Civ. 3298 (MJP)

UNITED STATES OF AMERICA,

Respondent.

----------X

S I R S :

PLEASE TAKE NOTICE that Benjamin Mallah hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment entered by the Hon. Milton J. Pollack, United States District Judge for the Southern District of New York, on October 18th, 1976, wherein the Petitioner's application to vacate his sentence pursuant to Title 28, United States Code, Section 2255, was in all respects denied.

Dated: New York, New York
October 26th, 1976

Yours, etc.

FISCHETTI & SHARGEL
Attorneys for Petitioner
1290 Avenue of the Americas
New York, New York 10019
212/586-3732

By: _____
GERALD L. SHARGEL
A Member of the Firm

TO:

HON. ROBERT B. FISKE
United States Attorney
U.S. Attorney's Office
One St. Andrew's Plaza
New York, New York

The petitioner is presently incarcerated at the Federal Penitentiary in Lewisburg, Pennsylvania.